ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 36, NUMBER 7
Friday, January 1, 2010

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The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet January 11, 2010 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1429-1431** of this Administrative Register.

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

Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, DECEMBER 15, 2009

NONE

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

STATE BOARD OF ELECTIONS
(As Amended at ARRS, December 14, 2009)

31 KAR 3:010. Current address of Kentucky registered voters and distribution of voter registration lists.

RELATES TO: KRS 116.085, 116.155, 117.025, 117.225
STATUTORY AUTHORITY: KRS 117.015[~~, 117.025(3)(h)~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015 authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. [~~KRS 117.025(3)(h) requires the State Board of Elections to provide voter registration lists of currently registered voters to specific entities and persons. The statute also prohibits the State Board of Elections from releasing a voter registration list to a person who intends to use the list for commercial use.~~] This administrative regulation establishes the procedures for election officials and voters to follow to correct and maintain voter registration records and establishes standards for the State Board of Elections to follow when reviewing a request for a voter registration list.

Section 1. Definitions. (1) "Advertisement" means any attempt by publication, dissemination, solicitation, or circulation to induce any person to enter into any obligation, or acquire any title or interest in any good or service.

(2) "Alphabetical labels" means labels of registered voters within the precinct with one (1) name per label and sorted in alphabetical order.

(3) "Alphabetical lists" means lists of registered voters generated from the statewide voter registration database and sorted in alphabetical order by last name within a precinct that have the name, address, age code, party, gender, zip code, and five (5) year voting history of every voter in the precinct.

(4) "CD-R[~~CD-ROM~~]" means a compact computer disc with read-only memory containing the voter's name and address, county code, precinct code, gender, party, zip code, date of birth, date of registration, and five (5) year voting history generated from the statewide voter registration database.

(5) "Household labels by street order" means labels that are generated from the statewide voter registration database and sorted by street address within the precinct with as many as four (4) names per label of the voters whose last name and address are an identical match.

(6) "Household labels by zip code order" means labels that are generated from the statewide voter registration database and sorted by zip code within the county with as many as four (4) names per label of the voters whose last name and address are an identical match.

(7) "Sale" means any sale, rental, distribution, offer for sale, rental, or distribution, or attempt to sell, rent, or distribute any good or service to another.

(8) "Statewide voter registration database" means a complete roster of all qualified voters within the state by county and precinct that the State Board of Elections is required to maintain pursuant to KRS 117.025(3)(a).

(9) "Street order lists" means lists of registered voters generated from the statewide voter registration database sorted in street order within a precinct and contain the name, address, age code, party, gender, zip code, and a five (5) year voting history of every registered voter in the precinct.

(10) "Voter registration list" means a list of registered voters generated from the statewide voter registration database in any format in any given election precinct in the Commonwealth of Kentucky that the State Board of Elections is required to furnish pursuant to KRS 117.025(3)(h).

Section 2. Correction of Voter Registration Records. (1) Each county clerk shall instruct the precinct election officers of the necessity for informing each voter that he or she shall correct any error existing in his or her address as it appears upon the precinct signature roster.

(2) Each precinct election officer shall instruct each voter to correct any error existing in his or her address as it appears upon the precinct signature roster.

(3) Each voter shall, when he or she signs the precinct signature roster, correct any error existing in his or her address as it appears upon the precinct signature roster.

(4) Each county clerk shall take all steps necessary to correct and update each voter's address upon the statewide voter registration database.

Section 3. Interpretation of Commercial Use. Commercial use, as that term is used in KRS 117.025(3)(h), shall be interpreted by the Board of Elections to mean:

(1) The use by the requester of the voter registration list, or any part thereof, in any form, for profit, the solicitation of donations, or for the sale or advertisement of any good or service; or

(2) The transfer of a voter registration [~~the~~] list by the requester for a profit to any other person whom the requester knew or should have known intended to use the voter registration list, or any part thereof, in any form, **for profit, the solicitation of donations, or** for the sale or advertisement of a good or service.

Section 4. Exceptions to Commercial Use Interpretation. Commercial use shall not include use of a voter registration list, or any part thereof, for the following purposes:

(1) Use for scholarly, journalistic, political (including political fund raising), or governmental purposes; [~~or~~]

(2) Use for publication, broadcast, or related use by a newspaper, magazine, radio station, television station, or other news medium in its news or other publications or broadcasts; or

(3) Use in a publication provided or sold to duly qualified candidates; political party committees, or officials thereof; or any committee that advocates or opposes an amendment or public question.

Section 5. Requests for Voter Registration Lists. A request for voter registration lists shall be made by submitting a completed Request for Voter Registration Data, form SBE-84,[~~(02/04)~~] to the State Board of Elections with payment of costs as follows: [~~set forth in this section.~~]

(1) The minimum charge for lists and label orders shall be ten (10) dollars.

(2) The charge for alphabetical lists shall be four (4) dollars per precinct.

(3) The charge for street order lists shall be four (4) dollars per precinct.

(4) The charge for alphabetical labels shall be ten (10) dollars per thousand labels.

(5) The charge for household labels by street order shall be ten (10) dollars per thousand labels.

(6) The charge for household labels by zip code order shall be ten (10) dollars per thousand labels.

(7) The minimum charge for CD-R[~~CD-ROM~~] shall be twenty-five (25) dollars.

(8) The charge for CD-R[~~CD-ROM~~] shall be one (1) dollar per 1,000 records up to 100,000 records; fifty (50) cents per thousand records over 100,000 records; $450 statewide.

Section 6. Incorporation by Reference. (1) "Request for Voter Registration Data", SBE 84, October 2009 [~~(May 2007 edition)~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections,

140 West Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TREY GRAYSON, Chair
APPROVED BY AGENCY: October 13, 2009
FILED WITH LRC: October 13, 2009 at 2 p.m.
CONTACT PERSON: Kathryn H. Gabhart, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, December 14, 2009)

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

RELATES TO: KRS 103.200(1)(k), (l), (m), (n), (2), 103.2101, 103.286, Pub.L. 111-5
STATUTORY AUTHORITY: KRS 103.286(3), 26 U.S.C. sec. 146
NECESSITY, FUNCTION, AND CONFORMITY: KRS 103.286(3) requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations to provide for the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes the formula for that allocation. **This administrative regulation also**[~~In addition, the regulation~~] establishes the Commonwealth's role in the allocation of volume cap received as a result of the American Recovery and Reinvestment Act of 2009.

Section 1. Definitions. (1) "Affected bonds" means "private activity bonds" as defined by 26 U.S.C. sec. 146, excluding any obligations not subject to the state ceiling under the Code.
(2) "Allocation" means the amount of volume cap that was approved by the Kentucky Private Activity Bond Allocation Committee for a local issuer or state issuer.
(3) "ARRA" means the American Recovery and Reinvestment Act of 2009, **Pub.L. 111-5.**
(4) "Available volume cap" means the amount of volume cap remaining from the local issuer pool at the close of business on June 30.
(5)[~~(4)~~] "Bonds" is defined by KRS 103.200(2).
(6)[~~(5)~~] "Committee" means the Kentucky Private Activity Bond Allocation Committee.
(7)[~~(6)~~] "Eligible [~~available~~] volume cap applicants" means state issuers and local project applicants who file a notice of intent to issue relating to available volume cap.
(8)[~~(7)~~] "Issued" means delivered and paid for.
(9)[~~(8)~~] "Issuer" [~~or "issuing authority"~~] means the public or authorized governmental body which issues the bonds.
(10)[~~(9)~~] "Local issuer" [~~or "local issuing authority"~~] means a public or authorized governmental body which issues bonds on behalf of a local project.
(11)[~~(10)~~] "Local issuer pool" means the portion of the state ceiling from which allocations for local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity which is not a state agency.
(12)[~~(11)~~] "Local project" means a project, other than a project for creation or financing of residential single family or multifamily affordable housing which are included under the "state projects", for which bonds are issued on behalf or for the benefit of an entity which is not a state agency.
(13)[~~(12)~~] "Lottery" means any process of random selection utilized to allocate available volume cap and which is conducted:
(a) By staff at a public meeting of the Committee; and
(b) In accordance with Section **3**[~~5~~] of this administrative regulation.
(14)[~~(13)~~] "Staff" means the Office of Financial Management of the Finance and Administration Cabinet.
(15)[~~(14)~~] "State ceiling" means the cap imposed by 26 U.S.C. sec. 146 on private activity bonds issued within the Commonwealth of Kentucky.
(16)[~~(15)~~] [~~"State issuer pool" means the portion of the state ceiling from which allocations for state projects are made to issuers of affected bonds issued on behalf or for the benefit of a state agency.~~
~~(17)~~][~~(16)~~] "State project" means a project, including creation or financing of residential single family or multifamily affordable housing projects and student loans, for which bonds are issued by, on behalf, or for the benefit of a state agency.
(17)[~~(18)~~][~~(17)~~] "Year" **means** [~~shall mean~~] calendar year. [~~Section 2. Allocation of State Ceiling for Affected Bonds. On the first business day of January of each year, the state ceiling for affected bonds shall be divided into two (2) separate pools:~~
~~(1) Eighty (80) percent of the state ceiling shall be allocated to the state issuer pool until December 15th. On or after December 15th, the remainder of any unallocated portion of the state issuer pool shall be allocated by the Committee as carryforward.~~
~~(2) Twenty (20) percent of the state ceiling shall be reserved for the local issuer pool until June 30 or ninety (90) calendar days from the date of allocation. On July 1st, the remainder of any unallocated portion of the state ceiling shall become available volume cap.~~

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

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

Section 3.[~~5.~~] Allocation of Available Volume Cap. **(1)** Allocations from the available volume cap shall be made to eligible volume cap applicants in [~~an amount not greater than twenty-five (25) percent of~~] the local issuer pool, as follows:
(a)[~~(1)~~] First, a lottery shall be conducted to determine the order of disbursement to local projects which did not receive an allocation from the local issuer pool**;**
(b)[~~. (2)~~] Second, to the extent there is remaining available volume cap, a lottery shall be conducted to determine the order of disbursement to local projects which received an allocation from the local issuer pool, whether the allocation was issued or not**; and**
(c)[~~. (3)~~] Finally, any remaining available volume cap shall be allocated by the committee to one (1) or more state issuers for use during the year or as carry forward**.**[~~; and~~]
(2)[~~(4)~~] The committee shall choose a reasonable method of random selection for the lottery process.

Section 4.[~~6.~~] Committee Meetings. The committee shall meet as necessary to allocate the state ceiling. Special meetings may be held on the call of the committee chairman.

Section 5.[~~7.~~] An issuer shall obtain a confirmation authorizing the issuance of affected bonds by filing with the committee a written notice of intent to issue bond ("Notice of Intent" form). The

committee shall issue a confirmation ("Confirmation of Allocation of State Ceiling" form) allocating to the issuer a portion of the state ceiling. Affected bonds shall not be issued by any issuer prior to receiving confirmation by the committee of an allocation under the state ceiling. Confirmations shall be dated and numbered in the order issued.

Section 6.[~~8.~~] Notice of Issuance. Local Projects. Confirmation Effective for Ninety (90) Days. A confirmation shall expire ninety (90) calendar days from the date of allocation by the committee, or December 15, whichever is earlier. The issuer shall deliver to the committee a notice that the affected bonds have been issued ("Notice of Issuance" form). The notice of issuance may be sent by any means but the committee shall receive it by the close of business on the 90th day after the confirmation. If the notice period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

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

Section 8.[~~10.~~] Issuance of Bonds in Lesser Amounts than Confirmation. Eighty-five (85) Percent Requirement. A confirmation of affected bonds shall be effective if issued in amounts less than the confirmation; if the face amount of the issued bonds is not less than eighty-five (85) percent of the original confirmation. The issuer shall notify the committee if the bonds issued are within the eighty-five (85) percent requirement and the unused part of the allocation shall revert to the local issuer pool, or if this reversion occurs after June 30 of any year, the amount shall become available volume cap.

Section 9.[~~11.~~] Carry Forward Allocations. (1) In any year, the committee shall allocate any remaining state ceiling as carry forward allocations if the aggregate amount of affected bonds issued during the year is less than the state ceiling on December 15th. An issuer shall, in order to receive a carry forward allocation, file with the committee by December 15th:

(a) A notice of intent; and

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

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

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

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

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

Section 11.[~~13.~~] Form and Manner. (1) The notice and confirmation forms required to be filed with and issued by the committee are incorporated by reference in Section **14**[~~15~~] of this administrative regulation.

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

(a) File a notice of intent unless the issuance will be made within the ninety (90) day confirmation period established in Section **6**[~~8~~] of this administrative regulation; or

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

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

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

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

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

Section 13. Volume Cap Allocations under ARRA. (1) Through the ARRA, the federal government has made and may continue to make allocations of volume cap to state and local governments for the issuance of bonds, such as has been made for Recovery Zone Bonds and Qualified Energy Conservation Bonds. **If**[~~The committee supports these efforts and in the event that~~] the federal regulations governing these allocations allocate volume cap directly to the Commonwealth or allow for transfer or waiver of any direct volume cap allocation to a local government back to the Commonwealth, the committee shall:

(a) Accept any notice of waiver of [~~such~~] volume cap as authorized by the local governing body on behalf of the Commonwealth;[~~.~~]

(b) Accept applications of eligible volume cap recipients consistent with federal regulation; **and**[~~.~~]

(c) Rank each application and allocate volume cap based upon:

1. **Any** federally mandated standards and objectives[~~, if any~~]; **and**

2. Expected value to the Commonwealth[~~; and~~

~~3. Any other standard reasonably applied by the Committee.~~]

(2)[~~(d)~~] Notice of Issuance. The issuer shall deliver to the committee a notice that the affected bonds have been issued within the time constraints established in the applicable **federal** regulation**, if any.**

Section 14.[~~15.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

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

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

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

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

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Financial Management, 76 Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JONATHAN MILLER, Secretary

APPROVED BY AGENCY: September 14, 2009

FILED WITH LRC: September 15, 2009 at 9 a.m.

CONTACT PERSON: DeVon Hankins, Policy Advisor, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(As Amended at ARRS, October 13, 2009 and December 14, 2009)

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), **(u),** (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 owners;
(7) Special directions of the owner concerning limitations on showings and subagency restrictions; and
(8) Date and time for initialing 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 executory 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 executory 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 **state**[~~set forth~~]:
(1) The manner in which the purchase shall be financed; and
(2) The amount of any encumbrance and whether **it**[~~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)(u)** [~~324.160(4)(v)~~].

Section 6. Negotiating a **Subsequent** Listing Agreement **with Another Broker**[~~Prior to the Expiration of the Original Listing Agreement~~]. (1) **Prior to the expiration of an original listing agreement;**
(a) Another real estate broker, or sales associate of the broker, shall not contact the seller to obtain a subsequent listing agreement; and
(b) The seller may contact another real estate broker to obtain [~~A licensee shall not contact a seller in order to pursue the seller's current listing agreement or~~] a subsequent listing agreement.
(2) **Another broker, or sales associate of the broker,** [~~A licensee~~] may enter into a **subsequent**[~~new~~] listing agreement with **the seller** [~~a seller who has a written outstanding listing agreement granting exclusive agency with another real estate broker only~~] if:
(a) **The seller initiated contact with the licensee to discuss a new listing agreement;**
(b) The new listing agreement will take effect upon the expiration of the current listing agreement; and
(c)[~~(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; and
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).

Section 7. Incorporation by Reference. (1) "Seller-Initiated Re-Listing Request Disclosure Form," July 2009, is incorporated by reference.
(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.
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.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, December 14, 2009)

201 KAR 17:011. Requirements for interim licensure as a speech language pathologist.

RELATES TO: KRS 334A.035, 334A.050
STATUTORY AUTHORITY: KRS 334A.080
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 334A.080 requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. KRS 334A.035 and 334A.050 require the board to promulgate administrative regulations.** [~~KRS 334A.035 and 334A.050 establish requirements for~~] licensure as a speech-language pathologist [~~and audiologist~~], including a requirement that an applicant meet specified education and experience criteria as determined by the board. This administrative regulation establishes criteria for interim licensure for speech-language pathologists [~~and audiologists~~].

Section 1. Education and Experience. (1)[~~(a)~~] In addition to the citizenship requirements of KRS 334A.050, each applicant for interim licensure in speech-language pathology [~~or audiology~~] in Kentucky shall provide a certified transcript **confirming attainment of** [~~conferring~~] [~~hold~~] a master's degree in the area of speech-language pathology or communication disorders from **a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association**[~~an accredited program as determined by the board~~], or posses equivalent education.[~~or equivalent with major emphasis in speech-language pathology, audiology, or speech-language and hearing science from a college or university program accredited by the American Speech-Language-Hearing Association.~~]
(2)[~~(b)~~] An applicant shall have "equivalent" education if the applicant holds:
(a)[~~1.~~] A doctoral degree in speech-language pathology or

communication disorders or a related area[audiology] from **a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association**[an accredited][a] [program as determined by the board][accredited by the American Speech-Language-Hearing Association]; or

(b)[2.] A bachelor's degree from a regionally accredited college or university, and has completed all coursework and clinical practicum requirements leading to a doctorate or master's degree from **a university program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association**[an accredited][a] [university program as determined by the board][accredited by the American Speech-Language-Hearing Association]. A signed letter from the department chair or a director of graduate studies confirming all coursework and clinical hours have been met shall be provided **if**[in the event that] an official transcript is not yet available.

(3)[3.] The applicant shall submit to the board a written description verifying completion of the required academic coursework and supervised clinical experience on the Application for Interim License, with **official transcript or letter from the university verifying satisfactory completion of degree requirements**[required supporting documentation]. Credit shall not be allowed for courses listed on the application unless satisfactory completion is verified by an official transcript. The applicant receiving academic credit (semester hours, quarter hours, or other unit of credit) with a passing grade as defined by the training institution shall constitute satisfactory completion.

(4)[4.] Application for approval of academic coursework and supervised clinical experience shall be made as soon as possible after completion of these experiences, and **shall be due**[either before or] within thirty (30) days after the professional postgraduate experience is begun.

(5)[5.][(2)] A written plan for the postgraduate professional experience shall be submitted with the application for interim licensure within thirty (30) days after initiating the postgraduate professional experience. The applicant shall proceed to obtain postgraduate professional experience under a supervisor who is a speech-language pathologist who holds a valid Kentucky speech language pathology license or Education Professional Standards Board Master's level certification as a teacher of exceptional children in the areas of speech and communication disorders. [or audiologist licensed in Kentucky]. An applicant for interim licensure shall submit a completed Application for Interim Licensure to the board.

(6)[6.] Postgraduate professional experience.

(a) After completion of academic coursework and clinical practicum, the applicant shall successfully complete a period of postgraduate professional experience.

(b) The experience shall consist of at least thirty-six (36) weeks of full-time professional experience to consist of a minimum of thirty-five (35) work hours per week or its part-time equivalent as follows:

1. At least eighty (80) percent of the major responsibilities during postgraduate professional experience **shall**[must] be in direct contact with clients or patients, consultations, recordkeeping, and administrative duties.

2. The postgraduate professional experience **shall not total**[must total no] less than 1,260 hours accumulated within twenty-four (24) months of the beginning date of the experience.

3. Professional experience of less than five hours per week **shall**[does] not meet the requirement and shall not be counted toward the postgraduate professional experience.

4. Experience of more than thirty-five (35) hours per week shall not be used to reduce the postgraduate professional experience to less than thirty-six (36) weeks.

5. Once initiated, the postgraduate professional experience **shall**[must] be completed within twenty-four (24) months.

6. Extension of the postgraduate professional experience may be granted **in the event of:**

a. Illness;

b. Change in employment status;

c. Family Care Issue; or

d. Other extraordinary occurrence impacting one's ability to complete the postgraduate experience.[at the discretion of the board.]

(c) The experience shall be completed under the supervision of an individual who holds a valid Kentucky speech-language pathology license or Education Professional Standards Board Masters level certification as a teacher of exceptional children in the areas of speech and communication disorders.

1. The postgraduate professional experience supervisor shall **not engage in**[engage in no] fewer than thirty-six (36) supervisory activities during the postgraduate professional experience.

2. This supervision shall include eighteen (18) on-site observations of direct client contact at the interim licensee's work site.

a. One (1) hour shall equal one (1) on-site observation.

b. A maximum of six (6) on-site observations may be accrued in one (1) day.

c. At least six (6) on-site observations shall be accrued during each third of the experience.

d. These on-site observations shall be of the interim licensee providing screening, evaluation, assessment, habilitation, and rehabilitation.

3. The supervision shall include eighteen (18) other monitoring activities.

a. At least six (6) other monitoring activities shall be completed during each of the three (3) segments of the postgraduate professional experience.

b. These other monitoring activities may be executed by correspondence, review of video tapes or audio tapes, evaluation of written reports, phone conferences with the interim licensee, or evaluations by professional colleagues.

4. The supervisor periodically shall conduct a formal evaluation of the applicant's progress in the development of professional skills.

5. A person with an interim license shall take and pass a national **PRAXIS** examination in speech-language pathology. **Official documentation of scores shall be sent to the board directly from Educational Testing Services.** [approved by the board at the time of the application for licensure. Documentation shall be sent to the board.] A person with an interim license must continue to practice under supervision if a successful score is not achieved. If the applicant is unable to obtain a passing score within **twenty (24)**[24] months, they **shall**[must] seek board approval to continue to practice. **The applicant shall:**

(a) Submit a written, signed letter to the board requesting board approval; and

(b) Appear before the board.

Section 2. Incorporation by Reference. (1) "Application for Interim Licensure", September 2009,[November 1999,] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KELLIE ELLIS, Chair

APPROVED BY AGENCY: September 8, 2009

FILED WITH LRC: September 11, 2009 at 10 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, December 14, 2009)

201 KAR 17:012. Requirements for licensure.

RELATES TO: KRS 334A.033, **334.035(1)(c),** 334A.050**, 334A.187**

STATUTORY AUTHORITY: KRS **334A.033, 334A.050,** 334A.080(3)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which deli-**

neate qualifications for licensure and renewal of licensure. KRS 334A.033 and 334A.050 require the board to promulgate administrative regulations concerning[~~KRS 334A.033 and 334A.050 establish requirements for~~] licensure as a speech-language pathologist [~~and audiologist~~], including a requirement that an applicant meet specified education and experience criteria as determined by the board. This administrative regulation establishes criteria for licensure for speech-language pathologists [~~and audiologists~~]. [~~KRS 334A.187(1) establishes licensing requirements for applicants licensed in other states.~~]

Section 1. Education and Experience. In addition to the citizenship requirements of KRS 334A.050, each applicant for licensure in speech-language pathology [~~or audiology~~] in Kentucky shall meet the requirements established in this section:

(1)(a) An applicant shall provide a certified transcript **confirming attainment of**[~~conferring~~][~~have completed~~] a master's degree in the area of speech-language pathology or communication disorders from **a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association, or possess** [~~an accredited program, as determined by the board, or possess~~] equivalent education.[~~or equivalent with major emphasis in speech-language pathology, audiology, or speech-language and hearing science from a college or university program accredited by the American Speech-Language-Hearing Association.~~]

(b) An applicant shall have "equivalent" education if the applicant holds[~~:~~

~~1.~~] a doctoral degree in speech-language pathology, communication disorders or a related area[~~or audiology~~] from **a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association**[~~an accredited~~][a] [~~program as determined by the board~~].[~~accredited by the American Speech-Language-Hearing Association; or~~

~~2. A bachelor's degree from a regionally accredited college or university, and has completed all coursework and clinical practicum requirements leading to a doctorate or master's degree from a university program accredited by the American Speech-Language-Hearing Association.~~

~~(2) Postgraduate professional experience.~~

~~(a) After completion of academic coursework and clinical practicum, the applicant shall successfully complete a period of postgraduate professional experience.~~

~~(b) The experience shall consist of at least thirty-six (36) weeks of full-time professional experience to consist of a minimum of thirty (30) work hours a week or its part-time equivalent as follows:~~

~~1. Fifteen (15) to nineteen (19) hours per week over seventy-two (72) weeks;~~

~~2. Twenty (20) to twenty-four (24) hours per week over sixty (60) weeks; or~~

~~3. Twenty-five (25) to twenty-nine (29) hours per week over forty-eight (48) weeks.~~

~~(c) The experience shall be completed under the supervision of an individual who holds a Kentucky license or the Certificate of Clinical Competence from the American Speech-Language-Hearing Association in Speech-Language Pathology or Audiology as appropriate.~~

~~1. The postgraduate professional experience supervisor shall engage in no fewer than thirty-six (36) supervisory activities during the postgraduate professional experience.~~

~~2. This supervision shall include eighteen (18) on-site observations of direct client contact at the interim licensee's work site.~~

~~a. One (1) hour shall equal one (1) on-site observation.~~

~~b. A maximum of six (6) on-site observations may be accrued in one (1) day.~~

~~c. At least six (6) on-site observations shall be accrued during each third of the experience.~~

~~d. These on-site observations shall be of the interim licensee providing screening, evaluation, assessment, habilitation, and rehabilitation.~~

~~3. The supervision shall include eighteen (18) other monitoring activities.~~

~~a. At least six (6) other monitoring activities shall be completed during each of the three (3) segments of the postgraduate professional experience.~~

~~b. These other monitoring activities may be executed by correspondence, review of video tapes or audio tapes, evaluation of written reports, phone conferences with the interim licensee, or evaluations by professional colleagues.~~

~~4. The supervisor periodically shall conduct a formal evaluation of the applicant's progress in the development of professional skills.~~]

(2)[~~(3)~~] The applicant shall have passed a[~~one (1) of the~~] national **PRAXIS** examination[~~examinations~~] in speech-language pathology [~~and audiology which are~~] [~~approved by the board at the time of the application for license~~].

(3) In accordance with KRS 334A.035(1)(c),[~~(4)~~][~~American Speech-Language-Hearing Association and in effect at the time of application for licensure, either the national examination in speech-language pathology or the national examination in audiology.~~

~~(4) The applicant shall submit to the board a written description verifying his completion of the required academic coursework and supervised clinical experience on the Application for License, with required supporting documentation. Credit shall not be allowed for courses listed on the application unless satisfactory completion is verified by an official transcript. Satisfactory completion shall exist if the applicant has received academic credit (semester hours, quarter hours, or other unit of credit) with a passing grade as defined by the training institution.~~

~~(5) Application for approval of academic coursework and supervised clinical experience shall be made as soon as possible after completion of these experiences, and either before or within thirty (30) days after the professional postgraduate experience is begun.~~

~~(6)~~] within thirty (30) days after completion of the postgraduate professional experience, the applicant shall submit a complete application for licensure under this section. The applicant's[~~and his~~] supervisor shall verify[~~shall submit a written report to the board verifying~~] the successful completion of postgraduate professional experience by signing[~~on~~] the Application for License[~~, with required supporting documentation~~].

(4)[~~(5)~~] In addition to fulfilling the requirements of this **administrative** regulation and paying the requisite fees **established in 201 KAR 17:030(1)**, an applicant licensed in another state **shall comply with the provisions of KRS 334A.187** [~~or states shall submit a letter or letters of good standing from the other state or states where the applicant is licensed~~].

Section 2. Incorporation by Reference. (1) "Application for License", September 2009[~~November 1999~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KELLIE ELLIS, Chair

APPROVED BY AGENCY: September 8, 2009

FILED WITH LRC: September 11, 2009 at 10 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, December 14, 2009)

201 KAR 17:025. Requirements for an interim license as a speech-language pathology assistant.

RELATES TO: KRS 334A.035(2), 334A.033

STATUTORY AUTHORITY: KRS 334A.035(2), 334A.080

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure.**

KRS 334A.035(2) requires the board to promulgate administrative regulations concerning application for an interim license as a speech-language pathology assistant.[~~KRS 334A.033 establishes the requirements for interim licensure as a speech-language pathology assistant. KRS 334A.035(2) requires an applicant for interim licensure as a speech-language pathology assistant to complete postgraduate professional experience in order to become licensed.~~] This administrative regulation establishes the requirements for interim licensure.

Section 1. Education. (1) In order to receive an interim license to become a speech-language pathology assistant, the applicant shall possess a bachelor's[~~baccalaureate~~] degree in speech-language pathology or communication disorders, or possess equivalent education[~~.~~

~~(2) A baccalaureate degree in speech-language pathology shall be a baccalaureate degree~~] from a regionally accredited institution**, such as one (1) accredited by the Southern Association of Colleges and Schools** [~~approved by the Board~~].

(2)[~~in communication sciences or disorders or its equivalent.~~

~~(3) In order to be considered as equivalent, the applicant shall have obtained a baccalaureate degree~~] An applicant shall have equivalent education if the applicant has obtained a bachelor's degree and a minimum of twenty-seven (27) hours in the core areas of communication sciences or disorders including the following:

(a) Anatomy and physiology;
(b) Phonetics and speech science;
(c) Speech and language development;
(d) Communication disorders in children;
(e) Audiology;
(f) Aural rehabilitation; and
(g) Intervention for children with communication disorders.

Section 2. Supervision. (1) The interim licensee shall function under the supervision of an appropriate supervisor during the period of interim licensure.

(2) The supervisor shall design and provide a supervision system that protects pupil welfare and maintains the highest possible standards of quality speech-language pathology services.

(3) The supervisor may require additional supervision based on the experience of the interim speech-language pathology assistant, the pupils served, and the physical or geographic proximity to the supervisor.

(4) As the supervisory responsibility of the supervisor increases, the direct service responsibilities of the supervisor shall decrease.

(5) Treatment for the pupils served shall remain the responsibility of the supervisor. The level of supervision required shall be the minimum level necessary for the supervisor to retain direct contact with the pupils.

(6) Each interim speech-language pathology assistant shall be required to receive no less than three (3) hours per full-time week of documented direct supervision. Supervision shall be adjusted proportionally for less than full-time employment. The supervisor shall have direct contact time with the interim speech-language pathology assistant as well as with the pupil.

(7) Direct supervision shall consist of on-site, in-view observation and guidance as a clinical activity is performed.

[~~(a)~~] An interim[~~A~~] speech-language pathology assistant shall be supervised by either:

(a)[~~1.~~] A [~~licensed~~] speech-language pathologist who holds a Kentucky license in speech-language pathology; or

(b)[~~2.~~] An interim speech-language pathologist who holds an Education Professional Standards Board Master's level certification as a teacher of exceptional children in areas of speech and communication disorders.[~~A teacher certified to teach exceptional children with communication disorders, pursuant to 704 KAR 20:670~~].

(8) Supervision shall provide information about the quality of the interim speech-language pathology assistant's performance with assigned tasks and verify that clinical activity is limited to tasks specified in the interim speech-language pathology assistant's scope of responsibilities.

(9) Information obtained during direct supervision may include data relative to:

(a) Accuracy in implementation of screening, diagnostic, and treatment procedures;

(b) Agreement between the assistant and the supervisor on correct or incorrect judgment of target behavior;

(c) Accuracy in recording data; and

(d) Ability to interact effectively with the pupil.

(10) Indirect supervision shall be required no less than three (3) hours per full-time week. Supervision shall be adjusted proportionally for less than full-time employment. Indirect supervision may include:

(a) Demonstration;
(b) Record review;
(c) Review and evaluation of audio or videotaped sessions; or
(d) Supervisory conferences that may be conducted by telephone.

(11) A minimum total of six (6) hours of direct and indirect supervision per full-time week shall be required for each interim speech-language pathology assistant and shall be documented. Additional direct and indirect supervision may be necessary depending on the experience of the assistant and the needs of the pupil.

(12) An interim[~~A~~] speech-language pathology assistant shall not provide direct services if a supervising speech-language pathologist cannot be reached by personal contact, phone, pager, or some other immediate means.

(13) If, for any reason (including maternity leave, illness, or a change of jobs), the supervisor is no longer available to provide the level of supervision stipulated, the interim speech-language pathology assistant shall not provide service until a fully qualified speech-language pathologist has been designated as the speech-language pathology assistant's supervisor.

(14) Although more than one (1) supervisor may provide supervision of an interim[~~a~~] speech-language pathology assistant, a supervisor shall not be listed as the supervisor of record for more than two (2) interim speech-language pathology assistants. If multiple supervisors are used, each supervisor shall be responsible for that portion of the caseload that is theirs and each shall sign the license application and postgraduate professional experience report.

Section 3. Postgraduate Professional Experience. **(1)** A written plan for postgraduate professional experience shall be submitted with the application for interim licensure within thirty (30) days after initiating the postgraduate professional experience. The applicant shall proceed to obtain postgraduate professional experience under a supervisor who is a speech-language pathologist who holds a Kentucky license in speech-language pathology or Education Professional Standards Board Masters level certification as a teacher of exceptional children in the areas of speech and communication disorders. An applicant for interim licensure shall submit a completed application to the board.

(2)[~~(1)~~] The applicant shall obtain the equivalent of not less than nine (9) months of full-time professional experience with full-time employment, which shall be a minimum of thirty-five (35)[~~thirty (30)~~] clock hours of work a week.

(a) At least eighty (80) percent of the major responsibilities during postgraduate professional experience **shall**[~~must~~] be in direct contact with clients or patients, consultations, record-keeping, and administrative duties.

(b) The postgraduate professional experience **shall**[~~must~~] total no less than 1,260 hours accumulated within 24 months of the beginning date of the experience.

(c) Professional experience of less than five hours per week **shall**[~~does~~] not meet the requirement and shall not be counted toward the postgraduate professional experience.

(d) Experience of more than thirty-five (35) hours per week shall not be used to reduce the postgraduate professional experience to less than thirty-six (36) weeks.

(e) Once initiated, the postgraduate professional experience **shall**[~~must~~] be completed within twenty-four (24) months.

(f) Extension of the postgraduate professional experience may be granted **in the event of:**

1. Illness;

2. Change in employment status;

3. Family care issue; or

4. Other extraordinary occurrence impacting one's ability to complete the postgraduate professional experience.[~~at the discretion of the Board.~~] [~~This requirement may be fulfilled by part-time employment as follows:~~

~~(a) Work of fifteen (15) through nineteen (19) hours per week over eighteen (18) months;~~

~~(b) Work of twenty (20) through twenty-four (24) hours per week over fifteen (15) months; or~~

~~(c) Work of twenty-five (25) through twenty-nine (29) hours per week over twelve (12) months.~~

~~(2) If part-time employment is used to fulfill a part of the postgraduate professional experience, 100 percent of the minimum hours of the part-time work per week requirement shall be spent in direct professional experience.~~

~~(3) The postgraduate professional experience shall be completed within a maximum period of thirty-six (36) consecutive months.~~]

Section 4. Evaluation and Recommendation. Within thirty (30) days after completion of the postgraduate professional experience, the applicant and his supervisor shall submit a written report to the board verifying the successful completion of postgraduate professional experience.

KELLIE ELLIS, Board Chair

APPROVED BY AGENCY: September 8, 2009

FILED WITH LRC: September 11, 2009 at 10 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, December 14, 2009)

201 KAR 17:027. [~~Caseload and~~] Supervision requirements and caseload limitations of Speech-Language Pathology Assistants.

RELATES TO: KRS 334A.033[~~, 334A.190~~]

STATUTORY AUTHORITY: KRS 334A.033(1)(b), 334A.080

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. KRS 334A.033(1)(b) requires the board to promulgate administrative regulations to set forth supervision requirements for speech-language pathology assistants. This administrative regulation establishes those requirements.**[~~KRS 334A.033 establishes the requirements for licensure as a speech-language pathology assistant. KRS 334A.033(1)(a) and (b) provide that a speech-language pathology assistant shall practice under supervision and that the board shall establish the requirements for supervision.~~] [~~KRS 334A.190(1) establishes the caseload maximum for a speech-language pathologist practicing full time in the public schools. This administrative regulation establishes the supervisory requirements and establishes specific guidelines for caseload limitations for a speech-language pathologist practicing less than full time in the public schools.~~]

Section 1. The supervision requirements specified in this administrative regulation shall be the minimum requirements.

(1) The supervisor shall design and provide a supervision system that protects pupil welfare and maintains the highest possible standards of quality speech-language pathology services.

(2) The supervisor may require additional supervision based on the experience of the speech-language pathology assistant, the pupils served, and the physical or geographic proximity to the supervisor.

(3) As the supervisory responsibility of the supervisor increases, the direct service responsibilities of the supervisor shall decrease.

Section 2. Treatment for the pupils served shall remain the responsibility of the supervisor. The level of supervision required shall be the minimum level necessary for the supervisor to retain direct contact with the pupils.

Section 3. Each speech-language pathology assistant shall be required to have direct supervision in accordance with their years of experience as defined in KRS 334A.033. This ensures that the supervisor shall have direct contact time with the speech-language pathology assistant as well as with the pupil.

(1) Direct supervision shall be considered to be on-site, in-view observation and guidance as a clinical activity is performed. A speech-language pathology assistant shall be supervised by either:

(a) A speech-language pathologist licensed by the Kentucky Board of Speech-Language Pathology and Audiology; or

(b) An[~~A "certified" speech-language pathologist as defined by the~~] Education Professional Standards Board master's level certification as a teacher of exceptional children in the areas of speech and communication disorders.

(2) Supervision shall provide information about the quality of the speech-language pathology assistant's performance with assigned tasks and verify that clinical activity is limited to tasks specified in the speech-language pathology assistant's scope of responsibilities.

(3) Information obtained during direct supervision may include data relative to:

(a) Accuracy in implementation of screening, diagnostic, and treatment procedures;

(b) Agreement between the assistant and the supervisor on judgment of target behavior;

(c) Accuracy in recording data; and

(d) Ability to interact effectively with the pupil.

Section 4. Each speech-language pathology assistant shall also be required to receive indirect supervision in accordance with their years of experience as defined in KRS 334A.033. Indirect supervision may include:

(1) Demonstration;

(2) Record review;

(3) Review and evaluation of audio or videotaped sessions; or

(4) Supervisory conferences that may be conducted by telephone.

Section 5. Direct and indirect supervision shall be required for each speech-language pathology assistant and shall be documented on a weekly basis. Additional direct and indirect supervision may be necessary depending on the experience of the assistant and the needs of the pupil.

Section 6. A speech-language pathology assistant shall not [~~at any time~~] provide direct services when a supervising speech-language pathologist cannot be reached by personal contact, phone[~~, pager~~], or some other immediate means.

Section 7. If, for any reason, including maternity leave, illness, or a change of jobs, the supervisor is no longer available to provide the level of supervision stipulated, the speech-language pathology assistant shall not provide service until a fully qualified speech-language pathologist has been designated as the speech-language pathology assistant's supervisor.

Section 8. Although more than one (1) supervisor may provide supervision of a speech-language pathology assistant, a supervisor shall not be listed as the supervisor of record for more than two (2) speech-language pathology assistants**, in accordance with KRS 334A.033(1)(c)**. If multiple supervisors are used, each supervisor shall be responsible for that portion of the caseload that is theirs.

Section 9. The maximum number of pupils served by the speech-language pathology assistant shall not exceed the casel-

oad established for a speech-language pathologist by administrative regulation.

Section 10. (1)(a) The caseload for a speech-language pathologist who works four (4) days a week, or the equivalent number of hours, in the public school system shall not exceed fifty-two (52) pupils.

(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works four (4) days a week, or the equivalent number of hours, in the public school system may be increased according to the provisions set forth in KRS 334A.190(2).

(2)(a) The caseload for a speech-language pathologist who works three (3) days a week, or the equivalent number of hours, in the public school system shall not exceed thirty-nine (39) pupils.

(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works three (3) days a week, or the equivalent number of hours, in the public school system may be increased according to the provisions set forth in KRS 334A.190(2).

(3)(a) The caseload for a speech-language pathologist who works two and one-half (2 1/2) days a week, or the equivalent number of hours, in the public school system shall not exceed thirty-two (32) pupils.

(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works two and one-half (2 1/2) days a week, or the equivalent number of hours, in the public school system may be increased according to the provisions set forth in KRS 334A.190(2).

(4)(a) The caseload for a speech-language pathologist who works two (2) days a week, or the equivalent number of hours, in the public school system shall not exceed twenty-six (26) pupils.

(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works two (2) days a week, or the equivalent number of hours, in the public school system may be increased according to the provisions set forth in KRS 334A.190(2).

(5)(a) The caseload for a speech-language pathologist who works one (1) day a week, or the equivalent number of hours, in the public school system shall not exceed thirteen (13) pupils.

(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works one (1) day a week, or the equivalent number of hours, in the public school system may be increased according to the provisions set forth in KRS 334A.190(2).[~~Section 10. (1)(a) The caseload for a speech-language pathologist who works four (4) days a week, or the equivalent number of hours, in the public school system shall not exceed fifty-two (52) pupils.~~

~~(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works four (4) days a week, or the equivalent number of hours, in the public school system may be increased according to the provisions set forth in KRS 334A.190(2).~~

~~(2)(a) The caseload for a speech-language pathologist who works three (3) days a week, or the equivalent number of hours, in the public school system shall not exceed thirty-nine (39) pupils.~~

~~(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works three (3) days a week, or the equivalent number of hours, in the public school system may be increased according to the provisions set forth in KRS 334A.190(2).~~

~~(3)(a) The caseload for a speech-language pathologist who works two and a half (2 1/2) days a week, or the equivalent number of hours, in the public school system shall not exceed thirty-two (32) pupils.~~

~~(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works two and a half (2 1/2) days a week, or the equivalent number of hours, in the public school system may be increased according to the provisions set forth in KRS 334A.190(2).~~

~~(4)(a) The caseload for a speech-language pathologist who works two (2) days a week, or the equivalent number of hours, in the public school system shall not exceed twenty-six (26) pupils.~~

~~(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works two (2) days a week, or the equivalent number of hours, in the public school system may be increased according to the provisions set forth in KRS 334A.190(2).~~

~~(5)(a) The caseload for a speech-language pathologist who works one (1) day a week, or the equivalent number of hours, in the public school system shall not exceed thirteen (13) pupils.~~

~~(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works one (1) day a week, or the equivalent number of hours, in the public school system may be increased according to the provisions set forth in KRS 334A.190(2).~~.]

KELLIE ELLIS, Chair

APPROVED BY AGENCY: September 8, 2009

FILED WITH LRC: September 11, 2009 at 10 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, December 14, 2009)

201 KAR 17:030. License fees and renewal requirements [~~for inactive status~~].

RELATES TO: KRS 334A.160, 334A.170

STATUTORY AUTHORITY: KRS 334A.080(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure.** KRS 334A.080(6) requires the board to establish fees for licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist, in accordance with the maximum limits established in KRS 334A.160 and 334A.170. [~~KRS 334A.030(3) requires the board to establish requirements for licensure and renewals.~~] This administrative regulation establishes the required fees and the requirements for inactive status.

Section 1. Fee Schedule. The following fees shall be paid in connection with speech-language pathologist and audiologist applications, renewals, and penalties.

(1) Application fee for a speech-language pathologist license, fifty (50) dollars.

(2) Application for an audiologist license, fifty (50) dollars.

(3) Combined application fee for a speech-language pathologist and audiologist license, $100.

(4) Application fee for a speech-language pathology assistant license, fifty (50) dollars.

(5) Application fee for interim licensure for a speech-language pathologist, fifty (50) dollars.

(6) Application fee for interim licensure for an audiologist, fifty (50) dollars.

(7) Combined fee for speech-language pathologist and audiologist interim licensure, $100.

(8) Application fee for interim licensure for a speech-language pathology assistant, fifty (50) dollars.

(9) Initial speech-language pathologist license fee of $100 or $150 if issued for the biennium.

(10) Initial audiologist license fee of $100 or $150 if issued for the biennium.

(11) Combined speech-language pathologist and audiologist license fee of $200 if issued for the biennium.

(12) Initial speech-language pathology assistant license fee of seventy-five (75) dollars or $125 if issued for the biennium.

(13) Biennial renewal fee for speech-language pathologist license, $100.

(14) Biennial renewal fee for audiologist license, $100.

(15) Biennial combined renewal fee for speech-language pathologist and audiologist license, $200.

(16) Biennial renewal fee for speech-language pathology assistant, $100.

(17) There shall not be a renewal fee for interim licensure. The application fee of fifty (50) dollars for full licensure shall be waived for a person who has been duly licensed as an interim licensee.

(18) Biennial renewal fee for grace period extending from January 31 to March 2:

(a) For speech-language pathologist license, $150.

(b) For audiologist license, $150.

(c) Combined fee for speech-language pathologist and audiologist license, $300.

(d) For speech-language pathology assistant, $150.

(19) In addition to the biennial renewal fees provided for in Section 1(9) through (10) delinquency fees after March 2 shall be:

(a) For speech-language pathologist license, $150.

(b) For audiologist license, $150.

(c) Biennial combined fee for speech pathologist and audiologist license, $300.

(d) For speech-language pathology assistant, $150.

Initial speech-language pathologist license fee, $100.

[~~(6) Initial audiologist license fee, $100.~~

~~(7) Combined speech-language pathologist and audiologist license fee, $200.~~

~~(8) Initial speech-language pathology assistant license fee, seventy-five (75) dollars.~~

~~(9) Biennial renewal fee for speech-language pathologist license, $100.~~

~~(10) Biennial renewal fee for audiologist license, $100.~~

~~(11) Biennial combined renewal fee for speech-language pathologist and audiologist license, $200.~~

~~(12) Biennial renewal fee for speech-language pathology assistant, $100.~~

~~(13) Biennial renewal fee for grace period extending from January 31 to March 2:~~

~~(a) For speech-language pathologist license, $150.~~

~~(b) For audiologist license, $150.~~

~~(c) Combined fee for speech-language pathologist and audiologist license, $300.~~

~~(d) For speech-language pathology assistant, $150.~~

~~(14) In addition to the biennial renewal fees provided for in Section 1(9) through (10) delinquency fees after March 2 shall be:~~

~~(a) For speech-language pathologist license, $150.~~

~~(b) For audiologist license, $150.~~

~~(c) Biennial combined fee for speech pathologist and audiologist license, $300.~~

~~(d) For speech-language pathology assistant, $150.~~

~~(15) Application fee for interim licensure for a speech-language pathologist, fifty (50) dollars.~~

~~(16) Application fee for interim licensure for an audiologist, fifty (50) dollars.~~

~~(17) Combined fee for speech-language pathologist and audiologist interim licensure, $100.~~

~~(18) There shall not be a renewal fee for interim licensure. The application fee of fifty (50) dollars for full licensure shall be waived for a person who has been duly licensed as an interim licensee.~~

~~(19) Application fee for interim licensure for a speech-language pathology assistant, fifty (50) dollars.~~]

Section 2. (1) A completed Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate, shall be submitted if the licensee wants to:

(a) Renew his license;

(b) Request to return to an active status from an inactive status;

(c) Request, or remain on, an inactive status; or

(d) Terminate licensure.

(2) The schedule of licensure renewals shall be as follows:

(a) Effective January 1, 2009:

1. All licensees shall renew their licenses.

2. A licensee having a license number ending in an even number shall:

a. Renew for a period of one (1) year; and

b. Pay one-half of the appropriate renewal fee established in Section 1(9)-(14) of this administrative regulation; and

3. A licensee having a license number ending in an odd number shall:

a. Renew for a period of two (2) years; and

b. Pay the appropriate renewal fee established in Section 1(9)-(14) of this administrative regulation.

(b) Effective January 1, 2010, a licensee:

1. **Shall renew the license biennially on or before January 31st; and**[~~Whose license number ends with an:~~]

a. Even number shall renew his or her license biennially in even-numbered years; and

b. Odd number shall renew his or her license biennially in odd-numbered years; and

2. Shall pay the appropriate renewal fee as established in Section 1(9) - (14) of this administrative regulation.

Section 3. If an application is filed during the period of December 1[~~17~~] to January 30 and a license issued, the board shall waive the renewal of the license for the ensuing licensing year.

Section 4. Inactive Licenses. (1) Fees.

(a) The inactive license fee for a speech-language pathologist for a biennial licensing period shall be twenty (20) dollars.

(b) The inactive license fee for an audiologist for a biennial licensing period shall be twenty (2) dollars.

(c) The combined inactive license fee for a speech-language pathologist and audiologist for a biennial licensing period shall be twenty (20) dollars.

(d) The inactive license fee for a speech-language pathology assistant for a biennial licensing period shall be twenty (20) dollars.

(2) Reactivation of an inactive license to practice speech-language pathology or audiology may be obtained by:

(a) Filing a completed Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate;

(b) Payment of the current renewal fee as set forth in Section 1 of this administrative regulation; and

(c) Compliance with the continuing education requirements established in 201 KAR 17:090, Sections 10 and 11.

(3) Application for an inactive license shall be made to the board prior to March 2 and shall be accompanied by the appropriate fee for the licensing year.

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

(a) "Renewal Application", September 2009[~~December 2008~~]; and

(b) "Renewal Application for Speech-Language Pathology Assistants", September 2009[~~January 2000~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KELLIE ELLIS, Chair

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FILED WITH LRC: September 11, 2009 at 10 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, December 14, 2009)

201 KAR 17:032. Requirements for interim licensure as an audiologist.

RELATES TO: KRS 334A.185(2)

STATUTORY AUTHORITY: KRS **334A.080(3),** 334A.185(2)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS**

334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. This administrative regulation establishes requirements for interim licensure as an audiologist.[~~As provided by KRS 334A.185(2), this administrative regulation establishes the requirements for interim licensure as an audiologist.~~]

Section 1. Education and Experience. (1)(a) Each applicant for interim licensure in audiology in Kentucky shall provide a certified transcript **confirming attainment of**[~~conferring~~] a Doctorate degree in audiology or a related field, or possess equivalent education **as described in paragraph (b) of this subsection**, excluding the Au.D. or substantive equivalent **from a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association or the Accreditation Commission for Audiology Education of the American Academy of Audiology**[~~as determined by the board from an accredited program as determined by the board~~].

(b) An applicant shall have equivalent education if the applicant holds:

1. A doctoral degree in audiology, excluding the Au.D., from **a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association or the Accreditation Commission for Audiology Education of the American Academy of Audiology**[~~an accredited program as determined by the board~~]; and

2. The applicant shall submit to the board a written description verifying [~~his~~] completion of the required academic coursework and supervised clinical experience on the Application for Interim License, with required supporting documentation. Credit shall not be allowed for courses listed on the application unless satisfactory completion is verified by an official transcript. Satisfactory completion shall exist if the applicant has received academic credit (semester hours, quarter hours, or other unit of credit) with a passing grade as defined by the training institution. A signed letter from the department chair or a director of graduate studies confirming all coursework and clinical hours have been met shall be provided **if**[~~in the event that~~] an official transcript is not yet available.

3. Application for approval of academic coursework and supervised clinical experience shall be made as soon as possible after completion of these experiences, and either before or within thirty (30) days after the postgraduate professional experience is begun.

4. A written plan for postgraduate professional experience shall be submitted with the application for interim licensure within thirty (30) days after initiating the postgraduate professional experience. The applicant shall proceed to obtain postgraduate professional experience under a supervisor who is a licensed audiologist. An applicant for interim licensure shall submit a completed Application for Interim Licensure to the board.

(2)[~~5.~~] Postgraduate professional experience.

(a) After completion of academic coursework and clinical practicum, the applicant shall successfully complete a period of postgraduate professional experience.

(b) The experience shall consist of at least thirty-six (36) weeks of full-time professional experience to consist of a minimum of thirty-five (35) work hours a week or its part-time equivalent as follows:

(c)[~~(1)~~] At least eighty (80) percent of the major responsibilities during the postgraduate professional experience shall be in direct client contact consultations, recordkeeping**,** and administrative duties.

(d)[~~(2)~~] Postgraduate professional experience shall **not** total [~~no~~] less than 1,260 hours.

(e)[~~(3)~~] Once initiated, postgraduate professional experience shall be accumulated within twenty-four (24) months. This may be extended **in the event of:**

1. Illness;

2. Change in employment status;

3. Family care issue; or

4. Other extraordinary occurrence impacting one's ability to complete the postgraduate professional experience[~~at the discretion of the board~~].

(f)[~~(4)~~] Professional experience of less than five hours per week **shall**[~~does~~] not meet the requirement and **shall**[~~may~~] not be counted toward postgraduate professional experience.

(g)[~~(5)~~] Experience of more than thirty-five (35) hours per week shall not be used to shorten the postgraduate professional experience to less than **thirty-six (36)**[~~36~~] weeks.

(h)[~~(6)~~] Extension of the postgraduate professional experience may be granted **in the event of:**

1. Illness;

2. Change in employment status;

3. Family care issue; or

4. Other extraordinary occurrence impacting one's ability to complete the postgraduate professional experience[~~at the discretion of the board~~].

(3) Supervision[~~(c) The experience~~] shall be completed under the supervision of an individual who holds a valid license in audiology issued by Kentucky or a state that borders Kentucky.

(a)[~~(1)~~] The postgraduate professional experience supervisor shall **not** engage in [~~no~~] fewer than thirty-six (36) supervisory activities during the postgraduate professional experience.

(b)[~~(2)~~] This supervision shall include eighteen (18) on-site observations of direct client contact at the interim licensee's work site.

1.[~~(a)~~] One (1) hour shall equal one (1) on-site supervision.

2.[~~(b)~~] A maximum of six (6) on-site observations may be accrued in one (1) day.

3.[~~(c)~~] At least six (6) on-site observations shall be accrued during each third of the experience.

4.[~~(d)~~] These on-site observations shall be of the interim licensee providing screening, evaluation, assessment, habilitation, or rehabilitation.

(c)[~~(3)~~] The supervision shall include eighteen (18) other monitoring activities.

1.[~~(a)~~] At least six (6) other monitoring activities shall be completed during each of the three (3) segments of the postgraduate professional experience.

2.[~~(b)~~] These other monitoring activities may be executed by correspondence, review of videotapes or audiotapes, evaluation of written reports, phone conferences with the interim licensee, or evaluations by professional colleagues.

(d)[~~(4)~~] The supervisor periodically shall conduct a formal evaluation of the applicant's progress in the development of professional skills.

(4)[~~(7)~~] A person with an interim license shall take and pass a national **PRAXIS** examination in audiology**. Official documentation of scores shall be sent to the board directly from Educational Testing Services.** [~~approved by the board at the time of application for licensure. Official documentation of scores shall be sent to the Board.~~] A person with an interim license shall continue to practice under supervision if a successful score is not achieved. If the applicant is unable to obtain a passing score within twenty-four (24) months, **the applicant shall**[~~he must~~] seek board approval to continue to practice.

Section 2. Incorporation by Reference. (1) "Application for Interim Licensure", September 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KELLIE ELLIS, Chair

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CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, December 14, 2009)

201 KAR 17:034. Requirements for licensure as a Speech-Language Pathology Assistant.

RELATES TO: KRS 334A.030, 334A.033
STATUTORY AUTHORITY: KRS **334A.033, 334A.080(3)**[~~334A.030, 334A.033, 334A.080(3)~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS **334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. KRS 334A.033(1)(b) requires the board to promulgate administrative regulations to set forth requirements for supervision, education and postgraduate professional experience for speech-language pathology assistants. This administrative regulation establishes criteria for licensure for speech-language pathology assistants.**[~~334A.030 and KRS 334A.033 establish requirements as a speech-language pathology assistant, including a requirement that an applicant meet specified educational and experience criteria as determined by the Board. This administrative regulation establishes criteria for licensure for speech-language pathology assistants.~~]

Section 1. Education and Experience. Each applicant for licensure as a speech-language pathology assistant in Kentucky shall meet the requirements established by this section.

(1) In order to receive a license to become a speech-language pathology assistant, the applicant shall possess a bachelor's degree in speech-language pathology or communication disorders, or possess equivalent education**, as described in subsection (2) of this section,** from a regionally accredited institution**, such as the Southern Association of Colleges and Schools** [~~approved by the board~~].

(2) An applicant shall have equivalent education if the applicant has obtained a bachelor's degree and a minimum of twenty-seven (27) hours in the core areas of communication sciences or disorders including the following:

(a) Anatomy and physiology;
(b) Phonetics and speech science;
(c) Speech and language development;
(d) Communication disorders in children;
(e) Audiology;
(f) Aural rehabilitation; and
(g) Intervention for children with communication disorders.

Section 2. Supervision. (1) The licensee shall function under the supervision of an appropriate supervisor during the period of licensure.

(2) The supervisor shall design and provide a supervision system that protects pupil welfare and maintains the highest possible standards of quality speech-language pathology services.

(3) The supervisor may require additional supervision based on the experience of the speech-language pathology assistant, the pupils served, and the physical or geographic proximity to the supervisor.

(4) As the supervisory responsibility of the supervisor increases, the direct service responsibilities of the supervisor shall decrease.

(5) Treatment for the pupils served shall remain the responsibility of the supervisor. The level of supervision required shall be the minimum level necessary for the supervisor to retain direct contact with the pupils.

(6) Each speech-language pathology assistant shall be required to receive direct supervision as stated in KRS 334A.033. Supervision shall be adjusted proportionally for less than full-time employment. The supervisor shall have direct contact time with the speech-language pathology assistant as well as with the pupil.

(7) Direct supervision shall consist of on-site, in-view observation and guidance as a clinical activity is performed.

(a) A speech-language pathology assistant shall be supervised by either:

1. A speech-language pathologist who holds a Kentucky license; or

2. A speech-language pathologist who holds Education Professional Standards Board Master's level certification as a teacher of exceptional children in the areas of speech and communication disorders.

(8) The supervisor shall provide information about the quality of the speech-language pathology assistant's performance with assigned tasks and verify that clinical activity is limited to tasks specified in the speech-language pathology assistant's scope of responsibilities.

(9) Information obtained during direct supervision may include data relative to:

(a) Accuracy in implementation of screening, diagnostic, and treatment procedures;
(b) Agreement between the assistant and the supervisor on correct or incorrect judgment of target behavior;
(c) Accuracy in recording data; and
(d) Ability to interact effectively with the pupil.

(10) Indirect supervision shall be required as stated in KRS 334A.033. Supervision shall be adjusted proportionally for less than full-time employment. Indirect supervision may include:

(a) Demonstration;
(b) Record review;
(c) Review and evaluation of audio or videotaped sessions; or
(d) Supervisory conferences that may be conducted by telephone.

(11) The minimum total of direct and indirect supervision as stated in KRS 334A.033 shall be required for each speech-language pathology assistant and shall be documented. Additional direct and indirect supervision may be necessary depending on the experience of the assistant and the needs of the pupil.

(12) A speech-language pathology assistant shall not provide direct services if a supervising speech-language pathologist cannot be reached by personal contact, phone, pager, or some other immediate means.

(13) If, for any reason (including maternity leave, illness, or a change of jobs), the supervisor is no longer available to provide the level of supervision stipulated, the speech-language pathology assistant shall not provide service until a fully qualified speech-language pathologist has been designated as the speech-language pathology assistant's supervisor.

(14) Although more than one (1) supervisor may provide supervision of a speech-language pathology assistant, a supervisor shall not be listed as the supervisor of record for more than two (2) speech-language pathology assistants. If multiple supervisors are used, each supervisor shall be responsible for that portion of the caseload that is theirs and each shall sign the license application and postgraduate professional experience report.

Section **3.**[~~2.~~] Within thirty (30) days after completion of postgraduate professional experience, the applicant shall submit a complete application for licensure under this section. The applicant's supervisor shall verify the successful completion of postgraduate professional experience by signing the Application for License.

Section **4.**[~~3.~~] Incorporation by Reference. (1) "Application for Licensure", September 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KELLIE ELLIS, Chair
APPROVED BY AGENCY: September 8, 2009
FILED WITH LRC: September 11, 2009 at 10 a.m.
CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, December 14, 2009)

201 KAR 17:036. Requirements for licensure for an Audiologist.

RELATES TO: KRS **334A.030, 334A.050, 334A.185, 334A.187**[~~334A.033, 334A.050, 334A.185~~]
STATUTORY AUTHORITY: KRS **334A.050, 334A.080(3), 334A.185**[~~334A.033, 334A.050, 334.080(3)~~].
NECESSITY, FUNCTION, AND CONFORMITY: KRS **334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. KRS 334A.050 and 334A.185 require the board to promulgate administrative regulations delineating education and experience criteria for licensure for audiologists. This administrative regulation establishes requirements for licensure for an audiologist.**[~~334A.033, 334A.050, and 334A.185 establish requirements as an audiologist, including a requirement that an applicant meet specified educational and experience criteria as determined by the board. This administrative regulation establishes criteria for licensure for audiologists. KRS 334A.187(2) establishes licensing requirements for applicants licensed in other states.~~]

Section 1. Education and Experience. Each applicant for licensure as an audiologist in Kentucky shall meet the requirements established by this section.

(1)(a) An applicant shall provide a certified transcript **confirming attainment of**[~~conferring~~] a doctorate degree in the area of audiology or substantive equivalent **as described in paragraph (b) of this subsection, from a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association or the Accreditation Commission for Audiology Education of the American Academy of Audiology**[~~from an accredited program as determined by the board~~].

(b) An applicant shall have equivalent education if the applicant holds:

1. A doctoral degree in audiology from **a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association**[~~an accredited program as determined by the board~~]; or

2. A master's degree from **a program accredited by the Council for Academic Accreditation of the American Speech Language Hearing Association**[~~an accredited program~~] conferred before January 1, 2007 [~~as determined by the board~~].

(2) The applicant shall have passed a national **PRAXIS** examination in audiology**. Official documentation of scores shall be sent to the board directly from Educational Testing Services**[~~approved by the Board at the time of the application for license~~].

(3) Within thirty (30) days of obtaining employment, the applicant shall apply for full licensure.

(4) In addition to fulfilling the requirements of this **administrative** regulation and paying the **fees specified in 201 KAR 17:030**[~~requisite fees~~], an applicant licensed in another state or states shall submit a letter or letters of good standing from the other state or states where the applicant is licensed.

Section 2. Incorporation by Reference. (1) "Application for Licensure", September 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained**, subject to applicable copyright law,** at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KELLIE ELLIS, Chair
APPROVED BY AGENCY: September 8, 2009
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GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, December 14, 2009)

201 KAR 17:038. Caseload limitations.

RELATES TO: KRS 334A.190(1)
STATUTORY AUTHORITY: KRS 334A.080(3)[~~, 334A.190(1).~~]
NECESSITY FUNCTION AND CONFORMITY: KRS **334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure.**[~~334A.190(1) establishes the caseload maximum for a speech-language pathologist practicing full-time in the public schools and for a speech language pathologist supervising a speech-language pathology assistant.~~] This administrative regulation establishes specific guidelines for caseload limitations for a speech language pathologist practicing in the public schools.

Section 1. (1)(a) The caseload for a speech-language pathologist who works five (5) days a week, or the equivalent number of hours in the public school system, shall not exceed sixty-five (65) pupils.

(b) The caseload for a speech-language pathologist who works four (4) days a week, or the equivalent number of hours in the public school system, shall not exceed fifty-two (52) pupils.

(c) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works four (4) days a week, or the equivalent number of hours in the public school system, may be increased according to the provisions set forth in KRS 334A.190(2).

(2)(a) The caseload for a speech-language pathologist who works three (3) days a week, or the equivalent number of hours in the public school system, shall not exceed thirty-nine (39) pupils.

(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works three (3) days a week, or the equivalent number of hours in the public school system, may be increased according to the provisions set forth in KRS 334A.190(2).

(3)(a) The caseload for a speech-language pathologist who works two and one half (2 1/2) days a week, or the equivalent number of hours in the public school system, shall not exceed thirty-two (32) pupils.

(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works two and one half (2 1/2) days a week, or the equivalent number of hours, in the public school system may be increased according to the provisions set forth in KRS 334A.190(2).

(4)(a) The caseload for a speech-language pathologist who works two (2) days a week, or the equivalent number of hours in the public school system, shall not exceed twenty-six (26) pupils.

(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works two (2) days a week, or the equivalent number of hours in the public school system, may be increased according to the provisions set forth in KRS 334A.190(2).

(5)(a) The caseload for a speech-language pathologist who works one (1) day a week, or the equivalent number of hours in the public school system, shall not exceed thirteen (13) pupils.

(b) The caseload of a speech-language pathologist who supervises speech-language pathology assistants, and works one (1) day a week, or the equivalent number of hours in the public school system, may be increased according to the provisions set forth in KRS 334A.190(2).

KELLIE ELLIS, Board Chair
APPROVED BY AGENCY: September 8, 2009
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CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, December 14, 2009)

201 KAR 17:041. Professional code of ethics.

RELATES TO: KRS 334A.180
STATUTORY AUTHORITY: KRS 334A.080(3)
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure.**[~~KRS 334A.080(3) requires the board to promulgate an administrative regulation that establishes ethical standards of practice.~~] This administrative regulation establishes the code of ethics.

Section 1. Responsibility to Patients. (1) A licensee shall:
(a) Advance and protect the welfare of the patient;
(b) Respect the rights of a person seeking his assistance; and
(c) Make reasonable efforts to ensure that his services are used appropriately.
(2) A licensee shall not:
(a) Exploit the trust and dependency of a patient;
(b)1. Except as provided by subparagraph 2 of this paragraph, engage in a dual relationship with a patient, including a social, business, or personal relationship that may:
a. Impair professional judgment;
b. Incur a risk of exploitation of the patient; or
c. Otherwise violate a provision of this administrative regulation;[~~.~~]
2. If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the patient, or otherwise violate a provision of this administrative regulation, a licensee shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the patient does not occur;
(c) Use his professional relationship with a patient to further his own interests;
(d) Continue a therapeutic relationship unless it is reasonably clear that the patient is benefiting from the relationship;
(e) Fail to assist a person in obtaining other therapeutic services if the licensee is unable or unwilling, for appropriate reasons, to provide professional help;
(f) Abandon or neglect a patient in treatment without making reasonable arrangements for the continuation of treatment;
(g) Videotape, record, or photograph [~~permit third-party observation of~~] the provision of services without having first obtained written informed consent from the patient;
(h) Permit third-party observation without first obtaining oral or written informed consent from the patient;
(i) Engage in sexual or other harassment or exploitation of his patient, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in an investigation or ethical proceeding; or
(j)[~~(i)~~] Diagnose, treat, or advise on a problem outside the recognized boundaries of his competence.

Section 2. Confidentiality. (1) A licensee shall respect and guard the confidences of each individual patient.
(2) A licensee shall not disclose a patient confidence except:
(a) As mandated, or permitted by law;
(b) To prevent a clear and immediate danger to a person;
(c) During the course of a civil, criminal, or disciplinary action arising from the therapy, at which the licensee is a defendant; or
(d) In accordance with the terms of a written waiver. If the patient is a minor, a parent may provide a waiver.
(3) A licensee may use patient or clinical materials in teaching, writing, and public presentations if:
(a) A written waiver has been obtained in accordance with subsection (2)(d) of this section; or
(b) Appropriate steps have been taken to protect patient identity and confidentiality.
(4) A licensee shall store or dispose of patient records so as to maintain confidentiality.

Section 3. Professional Competence and Integrity. A licensee shall maintain standards of professional competence and integrity and shall be subject to disciplinary action in accordance with KRS 334A.180:
(1) Upon conviction of a felony, or a misdemeanor related to the practice of the licensee. Conviction shall include adjudication based on:
(a) A plea of no contest or an "Alford Plea"; or
(b) The suspension or deferral of a sentence.
(2) If his license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;
(3) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the licensee's practice;
(4) If the licensee misrepresented or concealed a material fact in obtaining a license, renewing a license, or reinstating a license;
(5) If he has refused to comply with an order issued by the board; or
(6) If he has failed to cooperate with the board by not:
(a) Furnishing in writing a complete explanation to a complaint filed with the board;
(b) Appearing before the board at the time and place designated; or
(c) Properly responding to a subpoena issued by the board.

Section 4. Responsibility to His Student or Supervisee. A licensee shall:
(1) Be aware of his influential position with respect to a student or supervisee;
(2) Avoid exploiting the trust and dependency of a student or supervisee;
(3) Avoid a social, business, personal, or other dual relationship that could:
(a) Impair professional judgment; or
(b) Increase the risk of exploitation;
(4) Take appropriate precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;
(5) [~~Not provide professional services to a:~~
~~(a) Student;~~
~~(b) Employee; or~~
~~(c) Supervisee;~~
~~(6)~~] Not engage in sexual intimacy or contact with a:
(a) Student;
(b) Employee; or
(c) Supervisee;
(6)[~~(7)~~] Not permit a student or supervisee to perform or represent himself as competent to perform a professional service beyond his level of:
(a) Training;
(b) Experience; or
(c) Competence;
(7)[~~(8)~~] Not disclose the confidence of a student or supervisee except:
(a) If permitted or mandated by law;
(b) If it is necessary to prevent a clear and immediate danger to a person;
(c) During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the licensee is a defendant;
(d) In an educational or training setting, if there are multiple supervisors or professional colleagues who share responsibility for the training of the supervisee; or
(e) In accordance with the terms of a written informed consent agreement.

Section 5. Financial Arrangements. A licensee shall:
(1) Disclose his fees to a patient and supervisee at the beginning of service;
(2) Make financial arrangements with a patient, third-party payor, or supervisee that:
(a) Are reasonably understandable; and

(b) Conform to accepted professional practices;

(3) Not offer or accept payment for a referral; and

(4) Represent facts truthfully to a patient, third-party payor, or supervisee regarding services rendered.

Section 6. Advertising. (1) A licensee shall:

(a) Accurately represent education, training, and experience relevant to the practice; **and**

(b) Not use professional identification, including a business card, office sign, letterhead or telephone or association directory listing, that includes a statement or claim that is false, fraudulent, misleading, or deceptive pursuant to subsection (2) of this section.

(2) A statement shall be considered false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) Is intended to or likely to create an unjustified expectation; or

(c) Deletes a material fact or information.

KELLIE ELLIS, Chair

APPROVED BY AGENCY: September 8, 2009

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CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, December 14, 2009)

201 KAR 17:090. Continuing education requirements.

RELATES TO: KRS 334A.170(4)

STATUTORY AUTHORITY: KRS 334A.080(3), 334A.170(4)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure. KRS 334A.170(4) requires the board to promulgate administrative regulations to set forth requirements concerning continuing professional education.**[~~KRS 334A.170(4) requires a person applying for licensure renewal to show evidence of completion of continuing professional education as required by the board.~~] This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. (1) "Academic courses offered by an accredited postsecondary institution" means:

(a) A speech-language pathology or audiology course, designated by a speech-language pathology or audiology title or content; or

(b) An academic course, relevant to speech-language pathology or audiology.

(2) "Approved" means recognized by the Kentucky Board of Speech-Language Pathology and Audiology.

(3) "Continuing education hour" means sixty (60) clock minutes of participating in continuing educational experiences.

(4) "Program" means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or a series.

(5) "Provider" means an organization approved by the Kentucky Board of Speech-Language Pathology and Audiology for providing a continuing education program.

(6) **"Related" means having content that is not directly linked to the practice of speech-language pathology or audiology, but expands or augments clinical practice.**

(7) "Relevant" means having content applicable to the practice of speech-language pathology or audiology.[~~"Relevant" means having content applicable to the practice of speech-language pathology or audiology as determined by the board.~~

~~(7) "Related" means having content that is not directly related to the practice of speech-language pathology or audiology, but expands or augments clinical practice as determined by the board.~~]

Section 2. Accrual of Continuing Education Hours. (1) A minimum of thirty (30)[~~fifteen (15)~~] continuing education hours shall be accrued by each person holding licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist during the biennial[~~annual~~] period for renewal.

(2) A person who holds a license in both speech-language pathology and audiology shall complete a minimum of fifty (50)[~~twenty-five (25)~~] continuing education hours during the biennial period for renewal[~~licensure period for renewal for the following year~~]. This person shall obtain continuing education hours in both areas of licensure.

(3) All continuing education hours shall be in [~~or related to~~] the field in which the person is licensed. **The licensee may use up to a maximum of four (4) hours in a related area for each biennial period.**[~~No more than four (4) hours in a related area may be used in each biennial period.~~]

(4) [~~Continuing education hours earned in excess of those required under subsection (1) or (2) of this section may be carried over into the immediately following licensure renewal period to the following extent:~~

~~(a) A licensee holding one (1) license may carry over five (5) continuing education hours; or~~

~~(b) A licensee holding dual licensure may carry over eight (8) continuing education hours.~~

~~(5)~~] A person newly licensed during the license renewal period shall not be required to complete continuing education as a prerequisite for the first renewal of his license.

(5) A person failing to renew **the**[~~his or her~~] license within the five (5) year period after its expiration shall obtain a license only after meeting the initial licensure requirements of **201 KAR Chapter 17**[~~this chapter~~]. In addition, the applicant **shall**[~~must~~] provide proof of the successful completion of thirty (30) hours of continuing education within the last two (2) years for a speech-language pathology, speech-language pathology assistant, or audiology license or fifty (50) hours of continuing education for a license in both speech-language pathology and audiology. [~~The board may make exceptions to this requirement in its discretion.~~]

(6) Continuing education shall be completed by January 31 of the renewal period.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of a speech-language pathologist, speech-language pathology assistant, or audiologist.

(1) The hours shall be earned by completing any of the following educational activities:

(a) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of speech-language pathology or audiology and shall be approved without further review by the board if the program is:

1. Sponsored or approved by:

a. The American Speech-Language-Hearing Association; or

b. The American Academy of Audiology; or

2. An academic course offered by an accredited postsecondary institution directly related to speech-language pathology or audiology. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours. Programs designated to meet degree requirements shall not be acceptable;

(b) Programs requiring board review and approval. The board **shall**[~~will~~] issue an approval number upon receipt of **the documentation required by Section 4 of this administrative regulation**[~~appropriate documentation of course content~~]. A program from any of the following sources shall be reviewed and determined if the program is relevant and therefore subsequently approved by the board:

1. A program, including a home study course or in-service training provided by another organization, educational institution, or

service provider approved by the board **in accordance with Section 5 of this administrative regulation**;

2. A program or academic course presented by the licensee. A presenter of a relevant program or academic course shall earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; or

3. Authoring an article in a relevant, professionally recognized or juried publication. Credit shall not be granted for an article unless the article was published within the two (2)[~~one (1)~~] year period immediately preceding the renewal date and a licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal. More than one (1) publication shall not be counted during a renewal period.

4. Online coursework shall not exceed ten (10) hours per day.

(2) A general education course, elective course, or a course designated to meet degree requirements shall not be acceptable.

(3) Related continuing education subjects which are not specifically a part of the field of speech-language pathology or audiology may be approved for up to four (4)[~~two (2)~~] continuing education hours if the board believes that the related areas serve to enhance the licensee's ability to practice. The four (4)[~~two (2)~~] hour maximum credit for related areas of study by the licensee shall be applicable to only one (1) license (speech-language pathology or audiology) for those individuals who hold dual licensure. [~~The board may approve related course in its discretion.~~]

Section 4. Procedures for Approval of Continuing Education Programs. A course, which has not been preapproved by the board, may be used for continuing education if approval is secured from the board for the course. [~~In its discretion,~~] The board may consider for approval a Continuing Education program if one (1) or more of the following items have [~~not~~] been submitted. In order for the board to adequately review a program, the following information shall be submitted:

(1) A published course or seminar[~~similar~~] description;

(2) Names and qualifications of the instructors;

(3) A copy of the program agenda indicating hours of education, coffee and lunch breaks;

(4) Number of continuing education hours requested;

(5) [~~Official certificate of completion or college transcript from the sponsoring agency or college; and~~

~~(6)~~] Application to the board for continuing education credits approval.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. An entity seeking to obtain approval:

(a) Of a continuing education program prior to its offering shall apply to the board at least thirty (30)[~~sixty (60)~~] days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation; or

(b) As a prior-authorized continuing education provider under Section 3(1)(a) of this administrative regulation shall satisfy the board that the entity seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in subsection (2) of this section; and

2. Does not exclude a licensee from its programs.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

(a) Is an organized program of learning;

(b) Pertains to subject matters[~~,~~] which integrally relate to the practice of speech-language pathology or audiology;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have **relevant** educational training or experience [~~acceptable to the board~~].

(3)[~~3.~~] Providers of continuing education **shall**[~~must~~] provide attendees with a certificate of completion including the course approval number provided by the board.

Section 6. Responsibilities and Reporting Requirements of a Licensee. (1) During the licensure renewal period, up to fifteen (15) percent of all licensees shall be selected at random by the board and required to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board;

(2) A licensee shall:

(a) Be responsible for obtaining required continuing education hours;

(b) Identify his own continuing education needs and seek activities that meet those needs;

(c) Seek ways to integrate new knowledge, skills and attitudes;

(d) Select approved activities by which to earn continuing education hours;

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as required in Section 3(1) of this administrative regulation;

(f) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(g) Document attendance, participation in, and successful completion of continuing education activity for a period of two (2) years[~~one (1) year~~] from the date of the renewal; and

(h) Maintain records of continuing education hours.

(3) If audited, the following items are required to[~~The following items shall be used to~~] document continuing education activity:

(a) A transcript or tracking sheet issued by a professional association; or

(b) A transcript, official certificate of completion, or affidavit signed by the instructor;

[~~(b) Certificate;~~

~~(c) Affidavit signed by the instructor; or~~

~~(d) Receipt for the fee paid to the sponsor;~~]

(4) Failure to comply with the provisions of this administrative regulation shall constitute a violation of KRS 334A.170(4) and shall result in:

(a) Refusal to renew licensure;

(b) Suspension of licensure; or

(c) Revocation of licensure;

(5) Documentation sent to the board prior to renewal shall be returned to the licensee by regular mail.

Section 7. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) A provider of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 5(2) of this administrative regulation, directly to the licensee.

(2) A sponsor of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board. The board **shall**[~~will~~] provide an identifying number for the sponsor to use in identifying the course.

Section 8. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, in whole or part, the licensee shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 9. Waiver or Extensions of Continuing Education. (1) On application, the board may[~~shall~~] grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the licensee;

(b) Illness of the licensee or an immediate family member; or

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the person holding licensure; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

[~~(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.~~]

Section 10. Continuing Education Requirements for a Person on Inactive Status or Holding Interim Licensure. (1) The continuing education requirements established in Section 2 of this administrative regulation shall be waived for a licensee on inactive status during the time period **the licensee**[~~he~~] remains inactive. A person on inactive status who requests reactivation shall meet the requirements of Section 11 of this administrative regulation.

(2) The continuing education requirements established in Section 2 of this administrative regulation shall not apply to a person holding interim licensure. [~~The board may require continuing education as a requirement for requests for interim license extension.~~]

Section 11. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of thirty (30)[~~fifteen (15)~~] hours of continuing education within the twenty-four (24)[~~twelve (12)~~] month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) If the person seeking reinstatement or reactivation does not meet the requirement established in subsection (1) of this section, the board shall reinstate or reactivate licensure, and the person shall obtain thirty (30)[~~fifteen (15)~~] hours of continuing education within twelve (12)[~~six (6)~~] months of the date on which licensure is reinstated.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

KELLIE ELLIS, Chair

APPROVED BY AGENCY: September 8, 2009

FILED WITH LRC: September 11, 2009 at 10 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602.

GENERAL GOVERNMENT CABINET
Board of Speech-Language Pathology and Audiology
(As Amended at ARRS, December 14, 2009)

201 KAR 17:100. Clinical practice by licensed speech-language pathologists and audiologists in the area of minor training.

RELATES TO: KRS 334A.030

STATUTORY AUTHORITY: KRS 334A.080

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 334A.080(3) requires the Board of Speech-Language Pathology and Audiology to promulgate responsible administrative regulations, including administrative regulations which delineate qualifications for licensure and renewal of licensure.** This administrative regulation delineates the authority of licensees to practice in the area of minor training.

Section 1. **Definitions. (1) "Audiology" means the area of minor training for speech-language pathologists.**

(2) "Speech-Language Pathology" means the area of minor training for audiologists. [~~For purposes of this administrative regulation the area of minor training for speech-language pathologists shall be defined as "audiology;" and the area of minor training for audiologists shall be defined as "speech-language pathology."~~]

Section 2. In the course of clinical practice, licensed speech-language pathologists may engage in audiometric screening and licensed audiologists may engage in speech-language screening under the following guidelines:

(1) Licensed speech-language pathologists shall restrict their practice in audiology to the performance **and**[~~and/or~~] supervision of pure tone air conduction screening, otoacoustic emissions screening, screening tympanometry, and acoustic reflex screening either for the purpose of performing a speech **evaluation, a language evaluation, or for**[~~and/or language evaluation or for the purpose of~~] initial identification of individuals with other communicative disorders. Judgments and descriptive statements about the results of these procedures shall be limited to whether the individual passed or failed the screening procedure. The criteria for failure of audiometric screening should be developed in consultation with a licensed audiologist. Licensed speech-language pathologists may provide aural habilitative and rehabilitative services.

(2) Licensed audiologists shall restrict their practice in speech-language pathology to the performance **and**[~~and/or~~] supervision of speech **and**[~~and/or~~] language screening for the purpose of performing an audiological evaluation or for the purpose of initial identification of individuals with other communicative disorders. Judgments and descriptive statements about the results of these procedures shall be limited to whether the individual passed or failed the screening procedure. The criteria for failure of speech-language screening should be developed in consultation with a licensed speech-language pathologist. Licensed audiologists may provide aural habilitative and rehabilitative services.

KELLIE ELLIS, Chair

APPROVED BY AGENCY: September 8, 2009

FILED WITH LRC: September 11, 2009 at 10 a.m.

CONTACT PERSON: Adriana Lang, Board Administrator, Kentucky Board of Speech Language Pathology and Audiology, PO Box 1370, Frankfort, Kentucky 40602.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, December 14, 2009)

401 KAR 8:030. Water treatment plant and[~~**plants;**~~] **water distribution system classification and staffing**[~~**systems; certification of operators**~~].

RELATES TO: KRS 223.180, 223.190, 223.200, 223.210, 223.220, 224.10-110, EO 2009-538[~~2008-507, 2008-531~~][~~Chapters 223, 224~~]

STATUTORY AUTHORITY: KRS 223.180-223.220[~~223.160-223.220~~], 224.10-100, 224.10-110, EO 2009-538

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 requires [~~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. EO 2009-538, effective June 12, 2009, establishes[~~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 thirty (30) months after enactment 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) A[~~Each~~] public water system shall be[~~ensure that each component of the system is~~] operated according to the provisions of KRS [~~Chapters~~] 223 and 224 and 401 KAR Chapter 8[~~the administrative regulations of this chapter~~].

(b) A[~~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 be[~~operators are not~~] required for a semipublic water system[~~systems~~].

(c) Except as provided in subsection (2)(c)1.b, 2.b, and 4.b of this section, a public water system shall be operated by a[~~All~~] certified operator, other than an operator-in-training,[~~operators~~] in 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 has been assigned responsibility for the operational procedures performed 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. A[~~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.

1. A combination water treatment plant or water distribution system shall be classified as[~~Operational procedures at all~~] Class IA-D, Class IB-D, [~~and~~] IIB-D.

2. A system classified as a combination system in subparagraph 1. of this paragraph [~~water systems~~] shall be operated[~~conducted~~] by or under the supervision of an[~~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[~~is~~] in direct responsible charge of the system.

3. 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.

1. Class IIA.

a. Except as provided in subparagraph b. of this paragraph, if water is being treated,[~~Operational procedures at~~] a Class IIA water treatment plant shall be operated[~~conducted~~] by a certified water treatment plant **or performing system-related duties** operator who holds a valid certificate in a class equal to or higher than Class IIA who shall be[~~is~~] in direct responsible charge of the plant and shall be present at[~~is physically located on the premises of~~] the water treatment plant [~~during the daytime 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, IIIA, or IVA certified water treatment plant operator.~~]

2. Class IIIA.

a. Except as provided in subparagraph b. of this paragraph, if water is being treated,[~~Operational procedures at~~] a Class IIIA water treatment plant **or performing system-related duties** 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 IIIA who shall be[~~is~~] in direct responsible charge of the plant and shall be present at[~~is physically located on the premises of~~] the water treatment plant [~~when water is being treated or is otherwise performing system-related duties~~].

b. A Class IIIA water treatment plant that treats water during more than one (1) shift per day may employ a Class IIA 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 on site within thirty (30) minutes.

3. Class IIIB. [~~Operational procedures at~~] a Class IIIB water treatment plant shall be operated[~~conducted~~] 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 IIIB and who shall be[~~is~~] 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,[~~Operational procedures at~~] a Class IVA water treatment plant **or performing system-related duties** shall be operated[~~conducted~~] by a certified water treatment plant operator who holds a valid Class IVA certificate who shall be[~~is~~] in direct responsible charge of the plant and who shall be present at[~~is physically located on the premises of~~] the water treatment plant [~~when water is being treated or is otherwise performing system-related duties~~].

b. A Class IVA water treatment plant[~~plants~~] that treats[~~treat~~] water during more than one (1) shift per day may employ[~~use~~] a Class IIIA operator for one (1) shift per day, other than the shift worked by the Class IVA operator in direct responsible charge, so long as[~~the additional shifts, if~~] the Class IVA operator in direct responsible charge shall be[~~is~~] [~~on call and shall be~~][~~is~~] able to respond on site within thirty (30) minutes.

5. Class IVB. [~~Operational procedures at~~] A Class IVB water treatment plant shall be operated [~~conducted~~] 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. A **public water system**[~~water treatment plan~~] may propose an alternate staffing **plan**[~~requirement~~] to the staffing requirement established in this paragraph.

a. The proposal shall be submitted to the cabinet and shall thoroughly explain the alternate proposal.

b. The proposal shall demonstrate:

(i) A necessity for the water system to vary from the requirement in this paragraph; and

(ii) An equal level of protection of human health and the environment.

c. The cabinet shall not approve an alternate proposal that does not propose that a duly certified operator in direct responsible charge operate a water treatment **plant**[~~plan~~], in accordance with KRS 223.210.

(d)[~~(c)~~] 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 shall be[~~is~~] in direct responsible charge of the system.

(e)[~~(d)~~] System-related duties shall be **for:**

1. Class IIA, Class IIIA, and Class IVA water systems, duties related to the operation and maintenance of the water treatment plant; or

2. Class IA-D water systems, duties related to the operation and maintenance of the water treatment plant and distribution system[~~duties related to the operation and maintenance of the water treatment plant~~].

(3)(a)[~~(3) Certifiable 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 pass the appropriate examination of the requested class. This provision shall apply only to personnel who have hands-on drinking water treatment or distribution system experience.~~

~~(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[~~fulfill~~] the staffing requirements of this section by securing a contract operator or an operations firm.

(b) 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 the:

a.[~~1.~~] [~~The~~] Certified operator or contract operations firm; and

b.[~~2.~~] Principal contact within the firm for certification activities, if different;

2.[~~(b)~~] Name, [~~and~~] certificate type, and certificate number for each certified operator;

3.[~~(c)~~] Facility name, public water supply identification number, and county location of each system for which the contract or operations firm operator is assuming responsibility;

4.[~~(d)~~] Effective date and expiration date of the contract; and

5.[~~(e)~~] Duties and responsibilities of[~~to be performed by~~] each party to the contract[~~involved~~].

(4)[~~(6)~~] Certificate display. If a public water system office is available at the water treatment plant or within the distribution system, each operator's certificate shall be prominently displayed.

(5)[~~(7) Wallet card. Certified operators shall carry the wallet card issued by the cabinet in accordance with Section 4(1) of this administrative regulation showing current certification status while on duty.~~

~~(8)~~] Reporting requirements.

(a) A[~~Each~~] public water system shall notify the cabinet in writing within thirty (30) calendar days of a certified operator employment change[~~changes~~].

(b)1. A certified operator[~~operators~~] shall notify the cabinet within thirty (30) calendar days of a change in employment or mailing address [~~changes~~].

2. Employment change information shall include:

a. The name and identification number of the public water system;

b.[~~,~~] The effective date of the change;[~~,~~] and

c. 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 administrative regulations;~~

~~(5) Review and provide comments to the cabinet on proposed training courses and seminars designed to provide continuing education to 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; and~~

~~(8) Review and provide comments to the cabinet on proposed fees for training and certification of 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 401 KAR 8:050, Section 3. Application shall be made on the form entitled "Drinking Water or Wastewater Operator Certification Application" provided by the cabinet and incorporated by reference in Section 9 of this administrative regulation. Application shall not be filed with the cabinet until the individual has met the minimum qualifications required in 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 allow 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 (70) percent to pass the examination. Examinations shall not be returned to the applicant, but results may be reviewed with a member of the board or cabinet upon written request by the applicant.~~

~~(3) Scheduling examinations. Examinations shall be conducted at least semiannually at places and times set by the cabinet. The cabinet shall provide advance announcement 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 source characteristics and other pertinent matters.~~

~~(5) Applicant's conduct. Applicants found cheating shall be subject to disciplinary action including a final score of zero on the examination, denial of future applications for certification, or the provisions of Section 5 of this administrative regulation.~~

~~(6) Confidentiality of examinations. Examination questions shall be confidential. Any person who copies questions, removes all or part of any examination, or reveals all or part of any examination for unauthorized use shall be denied certification, be subjected to the sanctions identified in Section 5 of this administrative regulation, or be liable for civil and criminal penalties pursuant to KRS 223.991 or 224.99-010.~~

~~(7) Qualified applicants, other than those specified in subsection (5) or (6) of this section, who fail to pass an examination may register to take the examination on a regularly scheduled examination date.~~

~~Section 4. Issuance of Certificates. (1) Certification. Upon satisfactory fulfillment of the requirements of this administrative regulation and upon recommendation of the board, the cabinet 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 certificates.~~

~~(a) Certificates for all certified operator classes, except the limited classification as identified in Section 6(5) of this administrative regulation, shall be issued with a common expiration date of June 30 of even-numbered years, 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 to include 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 in direct responsible charge of a public water system.~~

~~(c) Renewals. Certificates shall be renewed without examination, if the certified operator has a valid certificate; upon completion of the required, board-approved continuing education hours outlined in subsection (7) of this section and upon submittal of a complete renewal application and applicable fees specified in 401 KAR 8:050, Section 3. Operators desiring renewal shall apply on the form entitled "Application for Certificate Renewal" provided by the cabinet and incorporated by reference in Section 9 of this administrative regulation by June 30 of even-numbered years. Expired certificates shall continue in force pending administrative processing of a renewal, if the certified operator has a valid certificate and has complied with all the renewal requirements of this subsection and subsection (7) of this section by June 30 of the renewal year. Certificates continued under this paragraph remain fully effective and enforceable.~~

~~(d) Limited certificates shall expire on June 30 of each year. The cabinet shall renew the limited certificate upon receipt of the renewal application if the certified operator has complied with all requirements for proper operation of the facility under his direct responsible charge and has submitted a written application and applicable fees specified in 401 KAR 8:050, Section 3.~~

~~(3) Certification for a higher classification. Certified operators who desire to become certified in a higher classification shall satis-~~

~~factorily complete the requirements of Sections 3 and 8 of this administrative regulation for the higher classification.~~

~~(4) Certificates shall be valid only while the holder uses reasonable care, judgment, and application of his knowledge in the performance of his duties. Certificates shall not be issued or valid if obtained through fraud, deceit or the submission of inaccurate data on qualifications.~~

~~(5) Termination of a certificate.~~

~~(a) If a certified operator fails to renew his certificate, the certificate shall terminate one (1) year after its expiration date. Limited 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 subsections (2)(c) and (7) of this section for each renewal period by June 30, 1997.~~

~~(6) Reciprocity. Certificates may be issued in a comparable classification, without examination, to a person who holds a valid certificate in a state, territory, or possession of the United States, or a country, if:~~

~~(a) The applicant filed a complete application as required in Section 3(1) of this administrative regulation;~~

~~(b) The certificate was earned by passing an examination in the reciprocal state;~~

~~(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 this 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 cabinet or board, prior to applying for certificate renewal. Class I and II certified operators shall complete twelve (12) hours of training for certificate renewal. Class III and IV certified operators shall complete twenty-four (24) hours of training for certificate renewal. The requisite 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 treatment and distribution certificates shall complete the training hours for recertification required for only the highest certificate in lieu of the continuing education requirements specified for both certificates in paragraph (a) of this subsection.~~

~~(c) Certified operators who teach board-approved training courses shall receive, upon approval of the board, hour-for-hour credit for actual instruction time.~~

~~(d) The criteria for determining whether to approve training, other than the training provided by the cabinet, 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 its determination regarding approval of training courses, the cabinet and board shall require that the following information be submitted for review: the course name; the date, location and a timed agenda for the course; 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. The board or cabinet may attend 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 class 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 the cabinet, in consultation with the board according to this 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 provided 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;~~

~~(e) Failed to use reasonable care or judgment in the course of employment as an operator, failed to apply knowledge or ability in the performance of duties, was incompetent in the performance of duties, or was unable to properly perform duties;~~

~~(f) Willfully or negligently caused or violated the requirements of KRS Chapters 223 or 224 or 401 KAR Chapter 8; or~~

~~(g) Willfully or negligently falsified or failed to maintain or submit, records required by 401 KAR Chapter 8.~~

~~(2) Sanctions. The disciplinary action shall be determined by the cabinet in accordance with the review procedures in subsection (3) of this section, and may take the form of the following sanctions according to subsection (4) of this section, depending on the severity, duration, and number of the violations. The sanctions may include:~~

~~(a) Probation for a specified period of time, not to exceed one (1) year;~~

~~(b) Suspension of the operator's certificate for a specified period of time, not to exceed one (1) year, during which the certificate shall be considered void;~~

~~(c) Temporary or permanent revocation of the operator's certification (temporary revocations shall not be less than one (1) year or more than four (4) years in duration); and~~

~~(d) Civil or criminal penalties against the operator.~~

~~(3) Initial review procedures. Written complaints received by the board or cabinet on a certified operator, unless duplicitous or frivolous, shall be reviewed at the next regularly scheduled board meeting. If the charges warrant further investigation, the certified operator may be advised to appear before the board to discuss the charges levied. Upon completion of the review, the board shall make a recommendation to the cabinet regarding the operator's certification status. The board may recommend that no action be taken or that the cabinet impose a sanction identified in subsection (2) of this section, or any other action.~~

~~(4) Cabinet action. The cabinet shall review the evidence presented and the board's recommendations. Upon completion of the review, the cabinet shall initiate the recommended action or notify the board as to why an alternative action was taken. The certified operator and his employer shall be advised by certified mail of the action, the reasons outlined for the action, and the length of time for which the sanction shall apply. A certified operator whose certificate has been suspended or revoked shall not perform direct responsible charge operator duties during the period that the disciplinary action remains in effect. If a certification is permanently revoked, the operator shall be ineligible for future certification as a water treatment plant or distribution system operator. Experience gained during a suspension or temporary or permanent revocation shall not be included toward meeting the requirements of Section 8 of this administrative regulation. An action taken by the cabinet pursuant to this administrative regulation shall not preclude the cabinet from pursuing additional civil or criminal action.~~

~~(5) Sanction review and removal. During the operator's probation, suspension, or temporary revocation, the board and cabinet shall monitor the operator's work activities. At the end of the sanction period, the board will recommend to the cabinet whether the sanction should be lifted or whether additional action is necessary against the certified operator.~~

~~(6) Appeal procedures. An operator who considers himself~~

~~aggrieved by the disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(2).~~

~~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 relates to and corresponds with~~] the operator classifications established in 401 KAR 11:040.

(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.~~

~~(1)~~] public water system [~~classifications~~] shall be classified according to the criteria in subsection (4)[~~established in accordance with the classes listed in subsections (2) and (3)~~] of this section.

(a)1. [~~However,~~] the cabinet may change a public water system classification if necessary because of:

a. Complexity of the system due to engineering design;

b. Source water quality; or

c. Operation conditions.

2.[~~make changes in system classifications in accordance with needs created by particular complexities of a public water system by reason of special features of design, or by reason of a source of supply that has characteristics that may make operation more difficult than normal, or a combination of these conditions. Due~~] Notice of a change shall be given to the owner of the public water system.

(b) The cabinet shall reclassify a nontransient noncommunity water system that treats water primarily for its industrial process with limited employee use[~~intervention~~][~~use~~] if the calculated portion of the water produced by the water treatment plant not used for the industrial process averages less than ten (10) percent of the average daily production averaged over the most recent twelve (12) months.

(4)(a)1. A water treatment plant or system[~~(2) Water treatment plants or systems shall be classified as one (1) of four (4) classes,~~] based on the cabinet-assigned design capacity for finished water production [~~that~~] the treatment plant is able to produce in twenty-four (24) continuous hours of production, taking [~~all limiting factors~~] into consideration all limiting factors[,] and the treatment process employed.

2. A water treatment plant classification shall be as established in Table 1 of this subsection.

(b)1. A water distribution system shall be classified according to population served, determined as established in 401 KAR 8:200, Section 3.

2. A water distribution system classification shall be as established in Table 1 of this subsection.

TABLE 1

	Water Treatment Plant (Assigned Design Capacity)	Water Distribution System (Population Served)
Class I	Less than 50,000 gallons per day	Less than 1,500
Class II	50,000 gallons or more per day but less than 500,000 gallons per day	Equal to or greater than 1,500 but less than 15,000
Class III	500,000 gallons or more per day but less than 3,000,000 gallons per day	Equal to or greater than 15,000 but less than 50,000
Class IV	3,000,000 gallons or more per day	Equal to or greater than 50,000

(c) [~~Public water systems with more than one (1) treatment plant shall have each treatment plant classified in accordance with this 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: all treatment plants which have an assigned design capacity of less than 50,000 gallons of water per day;~~

~~2. Class II: all treatment plants which have an assigned design capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day;~~

~~3. Class III: all treatment plants which have an assigned design capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons per day; and~~

~~4. Class IV: all treatment plants which have an assigned design capacity of 3,000,000 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 gravity filtration[~~a component of conventional filtration treatment~~][~~plants which use gravity filtration, except slow sand filtration as described in 401 KAR 8:150, 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 uses a filtration process other than gravity filtration; or

b. Groundwater not under the direct influence of surface water that does not use filtration processes[~~does not employ 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 8:150 for Class I and II water treatment plants~~].

(d) A[~~(c)~~] combination treatment and distribution system shall be classified as[~~classifications.~~] Class IA-D, Class IB-D, or Class[~~and~~] IIB-D [~~systems shall be classified as combined treatment and distribution systems~~].

(e) Each treatment plan comprising 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.[~~(3) Water treatment plant or system classifications.~~

~~(a) Class I.~~

~~1. Class IA-D. Systems which have an assigned design capacity of less than 50,000 gallons of water per day using gravity filtration, except for slow sand filtration, as a part of their treatment scheme and are responsible for the distribution of treated water.~~

~~2. Class IB-D. Systems which have an assigned design capacity of less than 50,000 gallons of water per day using slow sand filtration or treatment processes other than gravity filtration, and are responsible for distribution of treated water.~~

~~(b) Class II:~~

~~1. Class IIA. Plants which have an assigned design capacity of 50,000 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.~~

~~2. Class IIB-D. Systems which have an assigned design capacity of 50,000 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, and are responsible for the distribution of treated water.~~

~~(c) Class III:~~

~~1. Class IIIA. Plants which have an assigned design capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons of water per day using gravity filtration, except slow sand filtration, as a part of their treatment scheme.~~

~~2. Class IIIB. Plants which have an assigned design capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons of water per day using treatment processes other than gravity filtration.~~

~~(d) Class IV.~~

~~1. Class IVA. Plants which have an assigned design capacity of 3,000,000 or more gallons of water per day using gravity filtration, except slow sand filtration, as a part of their treatment scheme.~~

~~2. Class IVB. Plants which have an assigned design capacity of 3,000,000 or more gallons of water per day using treatment processes other than gravity filtration.~~

~~(4) Water distribution systems. Populations shall be determined as specified in 401 KAR 8:200.~~

~~(a) Class ID. Distribution systems serving a population less than 1,500.~~

~~(b) Class IID. Distribution systems serving a population equal to or greater than 1,500 and less than 15,000.~~

~~(c) Class IIID. Distribution systems serving a population equal to or greater than 15,000 and less than 50,000.~~

~~(d) Class IVD. Distribution systems serving a population equal to or greater than 50,000.~~]

(5) A bottled water treatment plant classification shall only apply to a bottled water system that bottles water for sale.

(6) Limited. A limited classification is available to a water treatment facility serving a school or a[~~facilities for schools and~~] semipublic water system[~~systems~~].

[~~(6) Special. Special designations may be added to any certificate if necessary to show competency of the operator for a parameter of treatment or operation not covered by the basic requirements for standard classification set forth in this section.~~

~~(7) Public water systems which were reclassified pursuant to this administrative regulation as in effect on October 7, 1996 shall comply with the requirements of Section 1 of this administrative regulation by October 7, 1997.~~

~~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 administrative regulation.~~

~~Section 8. Operator Qualifications: Experience, Education and Equivalencies. (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 distribution 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 3(2) of this 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 development (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 IIA:~~

~~1. Completion of high school or GED efficiency; and~~

~~2. Two (2) years of experience operating a public water treatment plant, with six (6) months of that experience in a Class IIA, IIIA or IVA treatment plant.~~

~~(d) Class IIB-D:~~

~~1. Completion of high school or GED efficiency; and~~

~~2. Two (2) years of experience operating a public water system, with six (6) months of that experience in a Class IA-D, IIB-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 treatment plant with one (1) year in a Class IIA, IIIA, or IVA water 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 IIA, IIB-D, IIIA, IIIB, IVA, or IVB water treatment plant.~~

~~(g) Class IVA:~~

~~1. A baccalaureate degree from an accredited college or university; and~~

~~2. One (1) year of experience operating a Class IIIA 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 IVB water treatment plant.~~

~~(i) Limited: An operator of a water treatment facility for a school or for a semipublic 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) Classification 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, IIID or IVD distribution system.~~

~~(c) Class IIID:~~

~~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, IIID 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 IIID or IVD distribution system.~~

~~(4) Substitutions.~~

~~(a) If applicable, education 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 as 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 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 requirement of a college degree by a high school graduate or recipient of a GED.~~

~~2. One (1) year of board-approved experience may be considered equivalent to one (1) year of high school. Four (4) years of board-approved experience may be considered equivalent to a high school diploma or a GED, subject to the approval of the board. Operators requesting this substitution shall submit a written request to the cabinet and may be requested to appear before the board.~~

~~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 equiva-~~

~~lent 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 requirements as follows: one (1) year of drinking water treatment experience shall be considered equivalent to one (1) year of distribution experience.~~

~~3. 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.~~

~~(d) 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 courses shall equal one (1) training credit, and forty-five (45) training credits shall equal eighteen (18) semester hours of college or one (1) year of high school. One (1) continuing education unit (CEU) shall equal ten (10) classroom hours.~~

~~Section 9. Documents Incorporated by Reference. The following documents are incorporated by reference and are available for public inspection and copying, subject to the copyright laws, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:~~

~~(1) "Drinking Water or Wastewater Operator Certification Application", "DEP 6047 (8/96)", available from the Kentucky Environmental and Public Protection Cabinet, Division of Water, Frankfort, Kentucky.~~

~~(2) "Application for Certificate Renewal", "DEP 6007 (8/96)", available from the Kentucky Environmental and Public Protection Cabinet, Division of Water, Frankfort, Kentucky.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 13, 2009

FILED WITH LRC: October 14, 2009 at 10 a.m.

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(As Amended at ARRS. December 14, 2009)

401 KAR 11:030. Wastewater treatment and collection system operators; classification and qualifications.

RELATES TO: KRS [~~224.10-110,~~] 224.73-110, EO 2009-538

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.73-110, EO 2009-538

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 responsibility for a school wastewater treatment plant and collection system.

(b) Class I Treatment certification.

1. A Class I treatment operator may have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to 50,000 gallons per day.

2. A Class I Treatment operator shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.

(c) Class I Treatment certification with an Operator in Training designation.

1. A Class I Treatment operator with an Operator in Training designation may have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to 50,000 gallons per day

2.[~~.~~] A Class I Treatment operator with an Operator in Training designation shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.

(d) Class II Treatment certification.

1. A Class II Treatment operator may have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to two (2) million gallons per day.

2. A Class II Treatment operator shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.

(e) Class III Treatment certification.

1. A Class III Treatment operator may have primary responsibility for a wastewater treatment plant with a design capacity less than or equal to seven and one-half (7 1/2) million gallons per day.

2. A Class III Treatment operator shall not have primary responsibility for a wastewater treatment plant with a larger design capacity.

(f) Class IV Treatment certification. A Class IV Treatment operator may have primary responsibility for a wastewater treatment plant of any design capacity.

(2) Wastewater collection certifications.

(a) Class I Collection certification.

1. A Class I Collection operator may have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to 50,000 gallons per day.

2. A Class I Collection operator shall not have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity.

(b)[~~2.~~] Class I collection certification with an Operator in Training designation.

1. A Class I Collection operator with an Operator in Training designation may have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to 50,000 gallons per day.

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 responsibility 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 responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity.

(d) Class III Collection certification.

1. A Class III Collection operator may have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a design capacity of less than or equal to seven and one-half (71/2) million gallons per day.

2. A Class III Collection operator shall not have primary responsibility for a wastewater collection system that transports wastewater to a treatment plant with a larger design capacity.

(e) Class IV Collection certification. A Class IV Collection operator may have primary responsibility for any wastewater collection system.

Section 2. Wastewater Operator Qualifications: Experience, Education, and Equivalencies. An individual desiring to become a certified operator shall meet the following minimum qualifications prior to the cabinet approving the individual to take a certification examination as provided in 401 KAR 11:050.

(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 development (GED) certificate shall be required; and

2. Experience. One (1) year of acceptable operation of a wastewater treatment plant shall be required.

(c) Class I Treatment certification with an Operator in Training designation.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Experience shall not be required.

(d) Class II Treatment certification.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Two (2) years of acceptable operation of a wastewater treatment plant shall be required.

(e) Class III Treatment certification.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Three (3) years of acceptable operation of a wastewater treatment plant with 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; and[~~.~~]

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 certifications shall be as follows:

(a) Class I Collection certification.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. One (1) year of acceptable operation of a wastewater collection system shall be required.

(b) Class I Collection certification with an Operator in Training designation.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Experience shall not be 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[~~less~~] 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[~~less~~] than two (2)[~~or equal to seven and one-half (7 1/2)~~] million gallons per day shall be required; and[~~.~~]

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[~~less~~] than two (2)[~~or equal to seven and one-half (7 1/2)~~] 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) Continuing Education Requirement [~~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[~~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 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[~~specified~~] 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.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 13, 2009

FILED WITH LRC: October 14, 2009 at 2 p.m.

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(As Amended at ARRS, December 14, 2009)

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, EO 2009-538

STATUTORY AUTHORITY: KRS 223.160-220, 224.10-100, 224.10-110, EO 2009-538

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. EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet. This administrative regulation establishes classification of water treatment and distribution operator certifications and establishes the qualifications for certification.

Section 1. Classification of Water Operator Certifications. (1) Water treatment certifications.

(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 Class IA-D or Class IB-D water treatment plant as established in 401 KAR 8:030, Section 2 [~~with a design capacity less than 50,000 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 Class IB-D water treatment plant, as established in 401 KAR 8:030, Section 2 [~~with a design capacity less than 50,000 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.

(d)[~~(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 Class IIA water treatment plant or a Subclass A or B water treatment plant of an equal to or smaller design capacity, as established in 401 KAR 8:030, Section 2[~~with a design capacity of less than 500,000 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~~].

2. A Class IIA treatment operator shall not be in direct responsible charge for a water treatment plant with a larger design capacity.

(e)[~~(g)~~] Class IIB-D treatment certification.

1. A Class IIB-D treatment operator may be in direct responsible charge for a Class IIB-D water treatment plant or a Subclass B water treatment plant of a smaller design capacity, as established in 401 KAR 8:030, Section 2[~~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.

(f)[~~(h)~~] Class IIIA treatment certification.

1. A Class IIIA treatment operator may be in direct responsible charge for a Class IIIA water treatment plant or a Subclass A or B water treatment plant of an equal to or smaller design capacity, as established in 401 KAR 8:030, Section 2.[~~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.

(g)[~~(i)~~] Class IIIB treatment certification.

1. A Class IIIB treatment operator may be in direct responsible charge for a Class IIIB water treatment plant or a Subclass B water treatment plant of a smaller design capacity, as established in 401 KAR 8:030, Section 2[~~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.

(h)[~~(j)~~] Class IVA treatment certification.

1. A Class IVA treatment operator may be in direct responsible charge of any Subclass A or B water treatment plant, as established in 401 KAR 8:030, Section 2[~~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~~].

(i)[~~(k)~~] Class IVB treatment certification.

[~~1.~~] A Class IVB treatment operator may be in direct responsible charge of any Subclass B water treatment plant, as established in 401 KAR 8:030, Section 2[~~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 Class ID water distribution system, as established in 401 KAR 8:030, Section 2[~~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 Class IIID water distribution system, as established in 401 KAR 8:030, Section 2[~~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.

(c)[~~(d)~~] Class IIID distribution certification.

1. A Class IIID distribution operator may be in direct responsible charge for a Class IIID water distribution system, as established in 401 KAR 8:030, Section 2[~~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.

(d)[~~(e)~~] Class IVD distribution certification.

1. A Class IVD distribution operator may be in direct responsible charge of any water distribution system.

(3) Bottled water certification. A bottled water operator may be in direct responsible charge for a bottled water system that bottles water for sale.

(4) Operator in Training designations.

(a) Except as provided in paragraph (c) of this subsection, a certified operator with an Operator in Training designation shall not serve in direct responsible charge of a water treatment plant or distribution system.

(b) A certified operator with an Operator in Training designation shall work under the direct supervision of a certified operator who works at the same facility and has obtained a certification level that is equal to or greater than the certification level required to serve in direct responsible charge of the facility.

(c) If a certified operator also has been issued a water treat-

ment, distribution, or bottled water certification without an Operator in Training designation, the operator may serve in direct responsible charge a water treatment plant, distribution system or bottled water system as provided by this Section for the certifications that do not have an Operator in Training designation.

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 established[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 Subclass A public water system, as established in 401 KAR 8:030, Section 2, with any design capacity [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 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 Subclass A or B public water system, as established in 401 KAR 8:030, Section 2, with any design capacity shall be required.

(d)[(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.

(f)] Class IIA treatment certification:

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Two (2) years of acceptable operation of a water treatment plant, with six (6) months in a Class IIA, IIIA, or IVA water treatment plant, as established in 401 KAR 8:030, Section 2, shall be required.

(e)[a. Six (6) months of the required experience shall be in a water treatment plant with a design capacity of greater than or equal to 50,000 gallons 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.

(g)] Class IIB-D treatment certification:

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Two (2) years of acceptable operation of a public water system with six (6) months in a Class IA-D, II B-D, or higher water treatment plan, as established in 401 KAR 8:030, Section 2, shall be required.

(f)[a. Six (6) months of the required experience shall be in a water treatment plant that treats surface water or groundwater under the direct influence of surface water and is responsible for the distribution of treated water; or

b. Six (6) months of the required experience shall be in a water treatment plant with a design capacity of greater than or equal to 50,000 gallons per day 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.

(h)] Class IIIA treatment certification:

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Three (3) years of acceptable operation of a public water treatment plant with one (1) year in a Class IIA, IIIA, or IVA water treatment plant, as established in 401 KAR 8:030, Section 2, shall be required.

(g)[a. One (1) year of the required experience shall be in a water treatment plant with a design capacity of greater than or equal to 50,000 gallons 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.

(i)] Class IIIB treatment certification:

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Three (3) years of acceptable operation of a public water treatment plant with one (1) year in a Class IIA, IIB-D, IIIA, IIIB, IVA, or IVB water treatment plant, as established in 401 KAR 8:030, Section 2, shall be required.

(h)[a. One (1) year of the required experience shall be in a water treatment plant with a design capacity of greater than or equal to 50,000 gallons 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; or

b. One (1) year of the required experience shall be in a water treatment plant with a design capacity of greater than or equal to 50,000 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.

(j)] Class IVA treatment 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 Class IIIA or IVA public water treatment plant, as established in 401 KAR 8:030, Section 2,[with a design capacity of greater than or equal to 500,000 gallons 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] shall be required.

(i)[(k)] Class IVB treatment 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 Class IIIA, IIIB, IVA, or IV public water treatment plant shall be required[with a design capacity of greater than or equal to 500,000 gallons per day].

(2) The educational and experience qualifications for water distribution certifications shall be as follows:

(a) Class ID distribution 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 water 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 IID 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.

(c)[(d)] Class IIID 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.

(d)[~~(c)~~] Class IVD 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) The educational and experience qualifications for Operator in Training designations shall be as follows:

(a) Class IA-D Treatment, Class IB-D Treatment, Class ID Distribution, and Bottled Water certifications.

1. Education. A high school diploma or general education development (GED) certificate shall be required; and

2. Experience. Experience shall not be required.

(b) All other applicants for the classifications identified in subsections 1(1) and 1(2) of this administrative regulation;

1. Shall have successfully qualified for and passed the certification exam of the same type classification at one **(1)** level lower than the Operator in Training designation being pursued; and

2. Shall not have been subject to disciplinary action as provided by 401 KAR 11:050, Section 4.

(5) Substitutions. The cabinet shall allow the following substitutions for the qualifications established[~~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:

a. Ten (10) contact hours, one (1) Continuing Education Unit[~~CEU~~], or one (1) post-secondary education quarter hour with a passing grade shall be considered equivalent to 0.022 years of experience.

b. One (1) postsecondary education semester hour with a passing grade shall be considered equivalent to 0.033 years of experience.

4. Education applied to the experience requirements specified in subsections (1) and (2) of this section shall not be applied to the education requirement.

(b) 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 applied 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.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 13, 2009

FILED WITH LRC: October 14, 2009 at 2 p.m.

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Compliance Assistance
(As Amended at ARRS, December 14, 2009)

401 KAR 11:050. Operator certification.

RELATES TO: KRS 223.160-220, [~~224.10-110,~~] 224.10-420(2), 224.73-110, EO 2009-538

STATUTORY AUTHORITY: KRS 223.160-220, 224.10-100, 224.10-110, 224.73-110, EO 2009-538

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of water and wastewater operators. EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet. 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 established[~~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) In addition to the requirements of paragraph (a) of this subsection, an applicant desiring to obtain an Operator in Training designation shall submit a signed letter for a certified operator located at the facility where the applicant will work. The letter shall include:

1. A statement from the certified operator indicating that the certified operator shall oversee the work of the applicant seeking an Operator in Training designation;

2. A commitment that the certified operator shall serve as a mentor to the applicant seeking an Operator in Training designation as long as the applicant is under the certified operator's direct responsible charge;

3. Verification that the certified operator is not currently the mentor for any other individuals with an Operator in Training designation; and

4. Confirmation that the certified operator has obtained a certification level that is equal to or greater than the certification level required to serve in primary responsibility of the facility.

(c) An application shall not be submitted to the cabinet unless the applicant has met the qualifications for examination.

(3)(a) After receipt of the application items **established**[~~identified~~] in subsection (2) of this section[~~completed forms and the application fee~~], the cabinet, considering the recommendation of the board, shall determine if the applicant meets the qualifications established[~~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 shall be[~~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.

(8) 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[set forth] in KRS 223.160-220,[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.

(9)(a) A certified operator who holds an Operator in Training designation may upgrade **the**[their] certification by removing the Operator in Training Designation without examination if **the operator**:

1. [The operator]Has satisfied the requirements of **Section 3(1)(a) and (b)**[paragraphs 2(1)(a) and 2(1)(b)] of this administrative regulation;

2.[The operator] Has acquired the minimum experience required for the certification being pursued as required by 401 KAR 11:030 or 11:040; and

3.[The operator] Submits a letter from the certified operator who has served as the applicant's mentor during the Operator in Training period that recommends the removal of the Operator in Training designation.

(b) A certified operator with an Operator in Training designation who is unable to comply with the requirements established in paragraph (a) of this subsection shall apply for and retake the certification exam to upgrade the operator's certification.

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 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)[(3)] 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 if[provided] the operator has:

(a) Accumulated the training hours required in subsection (5) of this section; and

(b) Submitted a completed Application for Certification Renewal form and the renewal fee to the cabinet or has renewed the certification electronically on the cabinet's Web site.

(2)(a) A certified operator seeking to renew a certification with an Operator in Training designation shall apply for and retake the certification exam as provided in Section 1 of this administrative regulation[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) The cabinet shall not approve an operator to take an exam to renew a certification with Operator in Training designation unless the applicant has accumulated the training hours required in subsection (5) of this section.[Upon renewal, the operator's][operators] [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 submitted electronically by June 30 of the year the certification expires, a late renewal fee as established in 401 KAR 8:050, Section 3 or 11:060, Section 1 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[both certificates].

(c) A certified operator holding multiple water 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[(d)] 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[or Class I or II Collection] certification shall complete twelve (12) hours of approved training; or

2. Certified operators with a Class III or IV Treatment, Collection, or Distribution[or Class III or IV Collection] certification shall complete twenty-four (24) hours of approved training.

(6)(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.

(b) After completing the review, the cabinet shall initiate the recommended disciplinary action or notify the board as to why an alternative disciplinary action was taken.

(5) A disciplinary action shall be commensurate with the severity, duration, and number of the violations. Disciplinary actions may include:

(a) Probation of the operator's certification for a specified period of time, not to exceed one (1) year;

(b) Suspension of the operator's certification for a specified period of time, not to exceed four (4) years, during which the certification shall be considered void;

(c) Revocation of the operator's certification;

(d) Civil or criminal penalties; or

(e) A combination of the disciplinary actions established in paragraphs (a) through (d) of this subsection.

(6) If disciplinary action is taken, the cabinet shall notify the certified operator and the operator's employer by certified mail of the action, the reasons outlined for the action, and the length of time for which the disciplinary action shall apply.

(7)(a) A certified operator whose certification has been suspended shall not have primary responsibility during the period that the suspension remains in effect.

(b) Experience gained during a suspension shall not be included toward meeting the requirements of 401 KAR 11:030 or 11:040.

(8) If a certification is revoked, the operator shall be ineligible for future certification.

(9) A certified operator who is aggrieved by a disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(2).

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

(a) "Registration Form for Exams and Training", August[~~July~~] 2009[~~May 2008~~];

(b) "Education and Experience Documentation Form", July 2009[~~May 2008~~];

(c) "Application for Certification Renewal", August[~~July~~] 2009[~~May 2008~~];

(d) "Application for Approval of Courses for Continuing Education Credit", August[~~July~~] 2009[~~May 2008~~];

(e) "Continuing Education Activity Report", August[~~July~~] 2009[~~May 2008~~]; and

(f) "Application for Reciprocity", July 2009[~~May 2008~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Compliance Assistance, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD K. PETERS, Secretary

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, December 14, 2009)

401 KAR 51:001. Definitions for 401 KAR Chapter 51.

RELATES TO: KRS 48.010(15)(a), 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, 50[~~,~~] Appendices A-R[~~K~~], 51.100(s), 51.121, 51.165, 51.166, 51 Appendix S, 52.920, 53, 60, 60 Appendices A, B, 61, 61 Appendix B, 63 Appendices A-D, 70.2, 75, 82[~~53, 60, 60 Appendices A and B, 61, 61 Appendix B, 63 Appendices A-D, 75~~], 96, 42 U.S.C. 7401-7671q, EO 2009-538

STATUTORY AUTHORITY: KRS 224.10-100(5), EO 2009-538

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires[~~authorizes~~] the[~~(5) requires the Environmental and Public Protection~~] 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. This administrative regulation defines the terms used in 401 KAR Chapter 51. The definitions contained in this administrative regulation are neither more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid rain emissions limitation" means a limitation on emissions of SO_2 or NOx imposed by the Acid Rain Program under 42 U.S.C. 7651 to 7651o.

(2) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined according to the following:

(a) Actual emissions as of a particular date equals the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four (24) month period, that precedes that date and is representative of normal source operation.

1. Use of a different time period is allowed if the cabinet determines that a different time period is more representative of normal source operation; and

2. Source-specific allowable emissions for the unit are equivalent to actual emissions of the unit if the cabinet has made an equivalency determination pursuant to 40 C.F.R. 51.166[~~The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period are used to calculate actual emissions~~].

(b) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(c) For an emissions unit, that has not begun normal operations on the particular date, actual emissions equals the potential to emit of the unit on that date.

(d) This definition does not include:

1. Calculating if a significant emissions increase has occurred; or

2. Establishing a PAL under 401 KAR 51:017, Section 20[~~23~~].

(3) "Actuals PAL" or "PAL" means a plant-wide applicability limit established for a major stationary source based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(4) "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Class I area. This determination:

(a)[~~1.~~] Is to be made on a case-by-case basis;

(b)[~~2.~~] Considers the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with the times of visitor use of the Class I area; and

(c)[~~3.~~] Considers the frequency and timing of natural conditions that reduce visibility.

(5) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that emits or may emit an air contaminant into the outdoor atmosphere.

(6) "Air contaminant" is defined by[~~in~~] KRS 224.01-010(1).

(7) "Air pollutant" means air contaminant.

(8) "Air pollution" is defined by[~~in~~] KRS 224.01-010(3).

(9) "Air pollution control equipment" means a mechanism, de-

vice, or contrivance used to control or prevent air pollution, that is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(10) "Allocate" or "allocation" means the determination by the cabinet of the number of NOx allowances to be credited to a NOx budget unit.

(11) "Allocation period" means each three (3) year period beginning May 1, 2004.

(12) "Allowable emissions" means:

(a) The emissions rate of a stationary source that is calculated using the maximum rated capacity of the source, unless the source is subject to federally-enforceable limits that restrict the operating rate, or hours of operation, or both, and the most stringent of the following:

1. The applicable standards codified in [~~of~~] 40 C.F.R. Parts 60 and 61;

2. The applicable SIP emissions limitations, including those with a future compliance date; or

3. The emissions rates specified as a federally-enforceable permit condition, including those with a future compliance date; or

(b) For an actuals PAL, the emissions rate of a stationary source [~~that is~~] calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit, and the most stringent provision of paragraph (a)1 to 3 of this subsection.

(13) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source; or

(b) A physical change in or change in the method of operation of an affected facility that increases the potential to emit a pollutant, to which a standard applies, emitted by the facility or that results in the emission of an air pollutant, [~~(~~]to which a standard applies,[~~)~~] not previously emitted.

(14) "Alternative method" is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both U.S. EPA and the cabinet[~~means a method of sampling and analyzing for an air pollutant that is not a reference method or equivalent method and has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance~~].

(15) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(16) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(17) "ANSI" means American National Standards Institute.

(18) "AOAC" means Association of Official Analytical Chemists.

(19) "ASTM" means American Society for Testing and Materials.

(20) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, that:

(a) For an existing electric utility steam generating unit (EUSGU), the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding the date the owner or operator begins actual construction of the project.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period; and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph;

2. Use of a cabinet-approved time period other than the twenty-four (24) month period is allowed, if [~~the cabinet determines that~~] a different time period is more representative of normal source operation; and

3. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed with[~~, where~~] a different consecutive twenty-four (24) month period [~~is~~] allowed for each regulated NSR pollutant.

(b) For an existing emissions unit that is not an EUSGU, the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period beginning on or after November 15, 1990, and immediately preceding the earlier of the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the cabinet for a permit required under 401 KAR 51:017 or [~~401 KAR~~] 51:052.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward:

(i) To exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period;

(ii) To exclude any emissions that would have exceeded an emission limitation with which the major stationary source is required currently to comply, if the source had been required to comply with the limitations during the consecutive twenty-four (24) month period; and

(iii) For an emission limitation that is part of a maximum achievable control technology standard proposed or promulgated under 40 C.F.R. Part 63, only if the Commonwealth of Kentucky has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with 40 C.F.R. 51.165(a)(3)(ii)(G); and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph; and

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed with[~~; however,~~] a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant.

(c) For a new emissions unit, equals zero for determining the emissions increase that will result from the initial construction and operation of the new unit and thereafter, for all other purposes, equals the unit's potential to emit.

(d) For a PAL for a stationary source, is determined as follows:

1. For an existing EUSGU, in accordance with the procedures contained in paragraph (a) of this subsection;

2. For other existing emissions units, in accordance with the procedures contained in paragraph (b) of this subsection; and

3. For a new emissions unit, in accordance with the procedures contained in paragraph (c) of this subsection.

(21) "Baseline area" means an intrastate area, and every part of that area, designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) $\mu g/m^3$ annual average of the pollutant for which the minor source baseline date is established.

(a) Area redesignations under 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) cannot intersect or be smaller than the area of impact of a major stationary source or major modification that:

1. Establishes a minor source baseline date; or

2. Is subject to 401 KAR 51:017 and would be constructed in the Commonwealth of Kentucky.

(b) A baseline area established originally for total suspended particulate (TSP) increments remains in effect to determine the amount of available PM_{10} increments, unless the cabinet rescinds the corresponding minor source baseline date.

(22) "Baseline concentration" means the ambient concentration level that exists in the baseline area on the date the applicable minor source baseline date is established.

(a) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and includes:

1. The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b) of this subsection; and

2. The allowable emissions of major stationary sources that commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

(b) The following are not included in the baseline concentration and thus affect the maximum applicable allowable increase:

1. Actual emissions at a major source, that result from construction commencing after the major source baseline date; and

2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.

(23) "Baseline date" means major source baseline date or minor source baseline date and is established for each pollutant for which increments or other equivalent measures have been established if the area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) for the pollutant on the date of the source's complete application; and

(a) For a major stationary source, the pollutant would be emitted in significant amounts; or

(b) For a major modification, there would be a significant net emissions increase of the pollutant.

(24) "Begin actual construction" means:

(a) Initiation of physical on-site construction activities on an emissions unit that are of a permanent nature and include installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures.

(b) For a change in method of operations, those on-site activities other than the preparatory activities, that mark the initiation of the change.

(25) "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each regulated NSR pollutant that will be emitted from a proposed major stationary source or major modification that:

(a) Is determined by the cabinet on a case-by-case basis pursuant to 40 C.F.R. 51.166(b)(12) after taking into account energy, environmental, and economic impacts and other costs, to be achievable by the source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant;

(b) Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard codified in [~~of~~] 40 C.F.R. Parts 60 and 61; and

(c) Is satisfied by a design, equipment, work practice, or operational standard or combination of standards approved by the cabinet, if:

1. The cabinet determines technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible;

2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice, or operation; and

3. The standard provides for compliance by means that achieve equivalent results.

(26) "BOD" means biochemical oxidant demand.

(27) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(28) "BTU" means British thermal unit.

(29) "Building, structure, facility, or installation" means all of the pollutant emitting activities that:

(a) Belong to the same industrial grouping, or have the same two (2) digit major group code, as described in the Standard Industrial Classification Manual, 1987;

(b) Are located on one (1) or more contiguous or adjacent properties;

(c) Are under the control of the same person or persons under common control; and

(d) Do not include the activities of a vessel.

(30) "C" means degree Celsius (centigrade).

(31) "Cabinet" is defined by[~~in~~] KRS 224.01-010(9).

(32) "Cal" means calorie.

(33) "Capital expenditure" is defined in 40 C.F.R. 60.2.

(34) "cfm" means cubic feet per minute.

(35) "CH_4" means methane.

(36) "Clean coal technology" means a technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

(37) "Clean coal technology demonstration project" means a commercial demonstration of clean coal technology, with a federal contribution of at least twenty (20) percent of the total cost of the project and funding appropriated as follows:

(a) Under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000; or

(b) To the U.S. EPA for a similar project.

(38) [~~"Clean unit" means an emissions unit that:~~

~~(a) Has been issued a major NSR permit that requires compliance with BACT or LAER; is complying with the applicable BACT or LAER requirements; and qualifies as a clean unit pursuant to 401 KAR 51:017, Section 20, or 401 KAR 51:052, Section 11;~~

~~(b) Has been designated by the cabinet as a clean unit, based on the criteria in 401 KAR 51:017, Section 21(2) or 401 KAR 51:052, Section 12(2), using a SIP approved permitting process; or~~

~~(c) Has been designated as a clean unit by the U.S. EPA in accordance with 40 C.F.R. 52.21(y)(3)(i) to (iv).~~

~~(39)~~] "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(39)[~~(40)~~] "CO" means carbon monoxide.

(40)[~~(41)~~] "CO_2" means carbon dioxide.

(41)[~~(42)~~] "COD" means chemical oxidant demand.

(42)[~~(43)"Collateral pollutant" means an air contaminant for which the emissions rate is increased as a result of undertaking a pollution control project.~~

~~(44)~~]"Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.

(43)[~~(45)~~] "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(44)[~~(46)~~] "Commence" means that an owner or operator:

(a) Has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility; or

(b) For construction of a major stationary source or major modification in the PSD or NSR program, has all necessary preconstruction approvals or permits, and:

1. Has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Has entered into binding agreements or contractual obligations, that cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(45)[~~(47)~~] "Commence commercial operation" means to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date remains the unit's date of commencement of commercial operation

even if the unit is subsequently modified, reconstructed, or repowered.

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of commercial operation.

(46)[~~(48)~~] "Commence operation" means, for a NOx budget unit, to have begun a mechanical, chemical, or electronic process, including start-up of a unit's combustion chamber. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date remains the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered.

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of operation.

(47)[~~(49)~~] "Complete" means, in reference to an application for a major NSR permit, that the application contains information necessary for processing the application. Designating an application complete for permit processing does not preclude the cabinet from requesting or accepting additional information.

(48)[~~(50)~~] "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(49)[~~(51)~~] "Compliance supplement pool" means the quantity of NOx allowances provided to Kentucky by the U.S. EPA to be:

(a) Allocated to NOx budget units that achieve early reduction; or

(b) Used to assist NOx budget sources that are unable to meet the compliance deadline as provided in 401 KAR 51:180, Section 5.

(50)[~~(52)~~] "Construction" means:

(a) Fabrication, erection, installation, or modification of an air contaminant source; or

(b) For the NSR program, any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit that would result in a change in emissions at an air contaminant source.

(51)[~~(53)~~] "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of 401 KAR 51:017 or [~~401 KAR~~] 51:052 to sample, condition[,] (if applicable), analyze, and provide a record of emissions on a continuous basis.

(52)[~~(54)~~] "Continuous emissions [~~emission~~] monitoring system for NOx" or "CEMS for NOx" means the equipment required by 40 C.F.R. 96.70 to 96.76 to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NOx emissions, expressed in tons per hour for NOx. The following systems are necessary component parts, as required by 40 C.F.R. Part 75, included in a continuous emissions [~~emission~~] monitoring system:

(a) Flow monitor;

(b) NOx pollutant concentration monitor;

(c) Diluent gas monitor (O_2 or CO_2) if required by 40 C.F.R. 96.70 to 96.76;

(d) Continuous moisture monitor if required by 40 C.F.R. 96.70 to 96.76; and

(e) Automated data acquisition and handling system.

(53)[~~(55)~~] "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

(54)[~~(56)~~] "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations in 401 KAR Chapters 50 to 65, used to sample, to condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

(55)[~~(57)~~] "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of 401 KAR 51:017 and [~~401 KAR~~] 51:052 to:

(a) Monitor process and control device operational parameters such as control device secondary voltages and electric currents;

(b) Monitor other information such as gas flow rate and[,] ozone or carbon dioxide concentrations; and

(c) Record average operational parameter values on a continuous basis.

(56)[~~(58)~~] "Control period" means:

(a) For the year 2004, the period beginning May 31, 2004, and ending September 30, 2004, inclusive; and

(b) For all other years, the period beginning May 1 of a year and ending September 30 of the same year, inclusive.

(57)[~~(59)~~] "Director" means Director of the Division for Air Quality of the Energy and Environment [~~Environmental and Public Protection~~] Cabinet.

(58)[~~(60)~~] "District" is defined by[~~in~~] KRS 224.01-010(11).

(59)[~~(61)~~] "dscf" means dry cubic feet at standard conditions.

(60)[~~(62)~~] "dscm" means dry cubic meter at standard conditions.

(61)[~~(63)~~] "Electric generating unit" means, for 401 KAR 51:160 to [~~401 KAR~~] 51:195, a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.

(62)[~~(64)~~] "Electric utility steam generating unit" or "EUSGU" means, for the PSD and NSR programs:

(a) A steam electric generating unit [~~that is~~] constructed for the purpose of supplying for sale:

1. More than one-third (1/3) of its potential electric output capacity; and

2. More than twenty-five (25) megawatt electrical output to a utility power distribution system for sale; and

(b) Steam to a steam-electric generator that would produce electrical energy is also considered in determining the electrical energy output capacity of the affected facility.

(63)[~~(65)~~] "Emission standard" means that numerical limit that fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

(64)[~~(66)~~] "Emissions unit" means any part of a stationary source, including an EUSGU, that emits or has [~~will have~~] the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and [~~401 KAR~~] 51:052, there are two (2) types of emissions units:

(a) A new emissions unit, which is any emissions unit that is or will be newly constructed and that has existed for less than two (2) years from the date the unit first operated; and

(b) An existing emissions unit, which is any emissions unit that does not meet the requirements in paragraph (a) of this subsection or is a replacement unit.

(65)[~~(67)~~] "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:

(a) Technically accurate emission standards[,] and the portions of the source that are subject to the standards;

(b) A time period adequate to demonstrate compliance with the standards; and

(c) The method the source shall [~~will~~] use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

(66)[~~(68)~~] "Equivalent method" means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet's and the U.S. EPA's satisfaction pursuant to 4o C.F.R. 53.3 to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(67)[~~(69)~~] "Excess NOx emissions" means any tonnage of nitrogen oxides emitted by a NOx budget unit during a control period that exceeds the NOx budget emissions limitation for the unit.

(68)[~~(70)~~] "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(69)[~~(71)~~] "Existing source" means a source that is not a new source.

(70)[~~(72)~~] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(71)[~~(73)~~] "°F" means degree Fahrenheit.

(72)[~~(74)~~] "Federal land manager" means, for any lands in the United States, the secretary of the department with authority over those lands.

(73)[~~(75)~~] "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:

(a) Requirements developed under 40 C.F.R. Parts 60 and 61;

(b) Requirements in the Kentucky state implementation plan (SIP) approved by the U.S. EPA; and

(c) Any permit requirements established under 40 C.F.R. 52.21 or under regulations approved under 40 C.F.R. Part 51, Subpart I, including operating permits issued under an EPA-approved program incorporated into the SIP, that expressly requires adherence to a permit issued under the program.

(74)[~~(76)~~] "Federally-enforceable permit" means a permit issued under 401 KAR 52:020 or [~~401 KAR~~] 52:030, as appropriate.

(75)[~~(77)~~] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(76)[~~(78)~~] "Fossil fuel" means natural gas;[~~,~~] petroleum;[~~,~~] coal;[~~,~~] or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(77)[~~(79)~~] "Fossil fuel fired" means, for a unit:

(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combusted comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date during the year the unit begins combusting fossil fuel.

(78)[~~(80)~~] "ft" means feet or foot.

(79)[~~(81)~~] "Fuel" means natural gas;[~~,~~] petroleum;[~~,~~] coal;[~~,~~] wood;[~~,~~] or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(80)[~~(82)~~] "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(81)[~~(83)~~] "g" means gram.

(82)[~~(84)~~] "gal" means gallon.

(83)[~~(85)~~] "General fund" is defined by KRS 48.010(15)(a) [~~in KRS 48.010(13)(a)~~].

(84)[~~(86)~~] "Generator" means a device that produces electricity.

(85)[~~(87)~~] "gr" means grain.

(86)[~~(88)~~] "HCl" means hydrochloric acid.

(87)[~~(89)~~] "Heat input" means the product, in MMBTU per unit of time, of the gross calorific value of the fuel, in BTU per lb, and the fuel feed rate into a combustion device, in mass of fuel per unit of time, that:

(a) Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources; and

(b) Is measured, recorded, and reported to the cabinet by the NOx authorized account representative in accordance with 40 C.F.R. 96.70 to 96.76.

(88)[~~(90)~~] "HF" means hydrogen fluoride.

(89)[~~(91)~~] "Hg" means mercury.

(90)[~~(92)~~] "High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.

(91)[~~(93)~~] "hr" means hour.

(92)[~~(94)~~] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(93)[~~(95)~~] "Hydrocarbon combustion flare" means:

(a) A flare used to comply with an applicable New Source Performance Standard (NSPS) or Maximum Achievable Control Technology (MACT) standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or

(b) A flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 µg/dscm hydrogen sulfide.

(94)[~~(96)~~] "H_2O" means water.

(95)[~~(97)~~] "H_2S" means hydrogen sulfide.

(96)[~~(98)~~] "H_2SO_4" means sulfuric acid.

(97)[~~(99)~~] "in" means inch.

(98)[~~(100)~~] "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(99)[~~(101)~~] "Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.

(100)[~~(102)~~] "Innovative control technology" means a system of air pollution control that has not been adequately demonstrated in practice, but have [~~will have~~] a substantial likelihood of achieving:

(a) Greater continuous emissions reduction than any control system in current practice; or

(b) At least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

(101)[~~(103)~~] "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(102)[~~(104)~~] "J" means joule.

(103)[~~(105)~~] "Kg" means kilogram.

(104)[~~(106)~~] "l" means liter.

(105)[~~(107)~~] "lb" means pound.

(106)[~~(108)~~] "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.

(107)[~~(109)~~] "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.

(108)[~~(110)~~] "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(109)[~~(111)~~] "Low terrain" means an area other than high terrain.

(110)[~~(112)~~] "Lowest achievable emissions rate" or "LAER" means, for any source, the more stringent rate of emissions based on:

(a) The most stringent emissions limitation that is contained in the Kentucky SIP for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable; or

(b) The most stringent emissions limitation that is achieved in practice by the class or category of stationary sources.

1. If this limitation is applied to a modification, this is the lowest achievable emissions rate for the new or modified emissions units at the stationary source.

2. The application of this term does not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(111)[~~(114)~~] "m" means meter.

(112)[~~(114)~~] "m^3" means cubic meter.

(113)[~~(115)~~] "Major emissions unit" means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of a PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act, 42 U.S.C. 7401-7671g for nonattainment areas.

(114)[~~(116)~~] "Major modification" is defined by 40 C.F.R. 51.165(a)(1)(v) for 401 KAR 51:052 and by 40 C.F.R. 51.166(b)(2) for 401 KAR 51:017.[~~means a physical change in or a change in the method of operation of a major stationary source that~~ results] [~~would result~~] [~~in a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant.~~

~~(a) A significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds~~ or nitrogen oxides ~~is considered significant for ozone.~~

~~(b) A physical change or change in the method of operation does not include:~~

~~1. Routine maintenance, repair, and replacement;~~

~~2. Use of alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;~~

~~3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;~~

~~4. Use of an alternative fuel or raw material by a stationary source that:~~

~~a. The source was capable of accommodating before January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR~~

~~51:052; unless the change would be prohibited by~~] [~~under~~] [~~a federally-enforceable permit condition that was established after January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052, pursuant to 40 C.F.R. 51.165 or 51.166; or~~

~~b. The source is approved to use by~~] [~~under~~] [~~a permit issued pursuant to 401 KAR 51:017 or~~] [~~401 KAR~~] [~~51:052;~~

~~5. An increase in the hours of operation or in the production rate, unless the change is prohibited by~~] [~~under~~] [~~any federally-enforceable permit condition established after January 6, 1975, for 401 KAR 51:017 or December 21, 1976, for 401 KAR 51:052 pursuant to 40 C.F.R. 52.21; after June 6, 1979, pursuant to 401 KAR 51:015; after September 22, 1982, pursuant to 401 KAR 51:017; or pursuant to~~] [~~under~~] [~~401 KAR 52:020 and~~] [~~401 KAR~~] [~~51:016E;~~

~~6. A change in ownership at a stationary source;~~

~~7.~~] [~~The addition, replacement or use of a pollution control project at an existing emissions unit meeting the requirements of 401 KAR 51:017, Section 22 or 401 KAR 51:052, Section 13, as applicable;~~

~~8.~~] [~~The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;~~

~~8.~~] [~~9.~~] [~~The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit, on a pollutant-by-pollutant basis; or~~

~~9.~~] [10.] [~~The reactivation of a very clean coal-fired electric utility steam generating unit.~~

~~(c) The definition~~ does] [~~shall~~] [~~not apply~~] [~~with respect~~] [~~to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 401 KAR 51:017, Section 20~~] [~~23~~] [~~and 401 KAR 51:052, Section 11~~] [~~14~~] [~~for a PAL for that pollutant. Instead, the definition at subsection (175)~~][~~(177)~~] [~~of this section applies~~] [~~shall apply~~].

(115)[~~(117)~~]"Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.

(116)[~~(118)~~] "Major source" means a source with a potential emission rate equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, carbon monoxide, or ODS.

(117)[~~(119)~~] "Major source baseline date" means:

(a) For particulate matter and sulfur dioxide, January 6, 1975; and

(b) For nitrogen dioxide, February 8, 1988.

(118)[~~(120)~~](a) "Major stationary source" means:

1.a. A stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant, except that the following lower emissions thresholds apply:

(i) For ozone nonattainment areas: 100 tons per year or more of volatile organic compounds or nitrogen oxides in a marginal or moderate ozone nonattainment area; fifty (50) tons per year or more of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area; twenty-five (25) tons per year or more of volatile organic compounds or nitrogen oxides in a severe ozone nonattainment area; or ten (10) tons per year or more of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area;

(ii) Fifty (50) tons per year or more of carbon monoxide in a serious carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels; and

(iii) Seventy (70) tons per year or more of particulate matter (PM_{10}) in a serious PM_{10} nonattainment area; or

b.(i) For the PSD program, any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants with thermal dryers, kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140, fossil fuel boilers, or combination of fossil fuel boilers, totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(ii) Regardless[~~2. With the exception~~] of [~~Notwithstanding~~] the stationary source size specified in **subclause (i) of this clause**[~~subparagraph 1b of this paragraph~~], a stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

2.[~~3.~~] Any physical change that will occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change will constitute a major stationary source by itself.

(b) A major stationary source that is major for volatile organic compounds or nitrogen oxides is considered major for ozone.

(c) The fugitive emissions of a stationary source are not included in determining if the source is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140;
21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Another[~~Any~~] stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(119) [~~(121)~~] "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that is reasonably preventable[~~that could have been reasonably prevented~~].

(120) [~~(122)~~] "Mandatory Class I area" means an area identified in 40 C.F.R. Part 81, Subpart D, if the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(121) [~~(123)~~] "Marginal nonattainment county" or "marginal

nonattainment area" means a county or portion of a county designated marginal nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(122) [~~(124)~~] "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(123) [~~(125)~~] "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes if [~~when~~] a unit lacks certified monitors to report heat input and is:

(a) A value calculated according to 40 C.F.R. Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 C.F.R. Part 75, Appendix D to report heat input; or

(b) A value reported according to 40 C.F.R. Part 75 using the maximum potential flow rate and either the maximum percent CO_2 concentration (in percent CO_2) or the minimum percent O_2, if the unit intends to use a flow monitor and a diluent gas monitor.

(124) [~~(126)~~] "Maximum potential NOx emission rate" means the emission rate of NOx (in lb per MMBTU) calculated according to 40 C.F.R. Part 75, Appendix F, Section 3, using the maximum potential NOx concentration as defined in 40 C.F.R. Part 75, Appendix A, Section 2, and the maximum percent O_2 or the minimum percent CO_2 under all operating conditions of the unit except for unit startup, shutdown, and malfunction.

(125) [~~(127)~~] "Maximum rated hourly heat input" means a unit specific maximum hourly heat input (MMBTU) that is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(126) [~~(128)~~] "μg" means microgram.

(127) [~~(129)~~] "mg" means milligram.

(128) [~~(130)~~] "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NOx emissions through:

(a) Burning part of the fuel at a lower temperature; and

(b) Reducing-conditions at the solid waste injection point that may destroy some of the NOx formed upstream in the kiln burning zone.

(129) [~~(131)~~] "min" means minute.

(130) [~~(132)~~](a) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 C.F.R. 52.21 or to administrative regulations approved under 40 C.F.R. 51.166 submits a complete application under applicable administrative [~~the relevant~~] regulations.

1. For particulate matter and sulfur dioxide, the trigger date is August 7, 1977; and

2. For nitrogen dioxide, the trigger date is February 8, 1988.

(b) A minor source baseline date established originally for the TSP increments remains in effect to determine the amount of available PM_{10} increments, except that the cabinet may rescind the minor source baseline date pursuant to 40 C.F.R. 51.166(b)(14)(iv) if it is demonstrated [~~shown,~~] to the satisfaction of the cabinet, that the emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification will construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) for the pollutant on the date of its complete application pursuant to 401 KAR Chapter 52 [~~under the relevant regulations~~]; and

2. For a major stationary source, the pollutant will be emitted in significant amounts or a significant net emissions increase of the pollutant will occur for a major modification.

(131) [~~(133)~~] "MJ" means megajoules.

(132) [~~(134)~~]"mm" means millimeter.

(133) [~~(135)~~] "MM" means million.

(134) [~~(136)~~] "mo" means month.

(135) [~~(137)~~] "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(136) [~~(138)~~] "Modification" means any physical change in, or a change in the method of operation of, an affected facility that:

(a) Increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and[~~or~~] replacement that the cabinet determines to be routine for a source category;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility is considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change;

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, unless an emission control system is removed or replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

(137) [~~(139)~~] "Monitoring device" means the total equipment, required by an [~~in~~] applicable administrative regulation in 401 KAR Chapters 50 to 65 [~~regulations~~], used to measure and record, if applicable, process parameters.

(138) [~~(140)~~] "Monitoring system" means a monitoring system that meets the requirements of 40 C.F.R. Part 96.

(139) [~~(141)~~] "MWe" means megawatt electrical.

(140) [~~(142)~~] "N_2" means nitrogen.

(141) [~~(143)~~] "Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time if not restricted by seasonal or other deratings as measured with United States Department of Energy standards pursuant to 40 C.F.R. 96.2.

(142) [~~(144)~~] "Natural conditions" means those naturally[-] occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(143) [~~(145)~~] "Necessary preconstruction approvals or permits" means those permits or approvals required under the administrative regulations approved to the Kentucky SIP pursuant to 40 C.F.R. 52.920, and federal air quality control laws and regulations established pursuant to 42 U.S.C. 7401-7671q.

(144) [~~(146)~~](a) "Net emissions increase" means, for any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:

1. An increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to 401 KAR 51:017, Section 1(4),, or 401 KAR 51:052, Section 1(2); and

2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable Baseline actual emissions for calculating increases and decreases under this paragraph are determined in this section..

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:

1. For construction that commences prior to January 6, 2002, the change occurs between the date ten (10) years before construction on the change commences, and the date that the increase from the change occurs; and

2. For construction that commences on and after January 6, 2002, the change occurs between the date five (5) years before construction on the change commences, and the date that the increase from the change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

1. The cabinet or the U.S. EPA has not relied on the change in

issuing a permit for the source pursuant to 401 KAR 51:017, [~~401 KAR~~] 51:052, or 40 C.F.R. 52.21; and

2. The permit is in effect at the time the increase or decrease in actual emissions from the particular change occurs.[~~; and~~

~~3. The increase or decrease in emissions did not occur at a clean unit, except as provided in 401 KAR 51:017, Sections 20(7) or 21(9) or 401 KAR 51:052, Sections 11(7) or 12(9).~~]

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM_{10} emissions are used to evaluate the net emissions increase for PM_{10}.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. The decrease is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

3. The decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.[~~; and~~

~~4. The decrease did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under 40 C.F.R. 52.21(y) or under administrative regulation approved pursuant to 40 C.F.R. 51.166(u) or 51.165(d).~~]

(g) An increase that results from a physical change at a source occurs if the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(h) The term, actual emissions, as defined in subsection (2) of this section does not apply in determining creditable increases and decreases.

(145) [~~(147)~~] "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation, irrespective of a change in emission rate.

(146) [~~(148)~~] "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(147) [~~(149)~~] "ng" means nanograms.

(148) [~~(150)~~] "NO" means nitric oxide.

(149) [~~(151)~~] "NO_2" means nitrogen dioxide.

(150) [~~(152)~~] "Nonattainment major new source review program" or "NSR program" means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.165 and 40 C.F.R. Part 51, Appendix S.

(151) [~~(153)~~] "NOx" means nitrogen oxides.

(152) [~~(154)~~] "NOx allowance" means an authorization to emit one (1) ton of NOx during a control period under the NOx Budget Trading Program.

(153) [~~(155)~~] "NOx Allowance Tracking System (NATS)" means the system by which the U.S. EPA records allocations, deductions, and transfers of NOx allowances under the NOx Budget Trading Program.

(154) [~~(156)~~] "NOx authorized account representative" means the [~~natural~~] person who is authorized by the owner or operator to:

(a) Represent and legally bind the owner and operator in all matters pertaining to the NOx Budget Trading Program in accordance with 40 C.F.R. Part 96, Subpart B for a NOx budget source and all NOx budget units at the source; and

(b) Transfer or otherwise dispose of NOx allowances held in the general account in accordance with 40 C.F.R. Part 96, Subpart F, for a general account.

(155) [~~(157)~~] "NOx budget emissions limitation" means, for a NOx budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under 401 KAR 51:160 adjusted by deductions of sufficient NOx allowances to account for:

(a) Actual utilization under 40 C.F.R. 96.42(e) for the control period;

(b) Excess NOx emissions for a prior control period under 40 C.F.R. 96.54(d);

(c) Withdrawal from the NOx budget program under 40 C.F.R. 96.86; or

(d) A change in regulatory status for a NOx budget opt-in source under 40 C.F.R. 96.87.

(156) [~~(158)~~] "NOx budget opt-in source" means an affected facility that has elected to become a NOx budget unit under the NOx Budget Trading Program and whose NOx budget opt-in permit has been issued and is in effect.

(157) [~~(159)~~] "NOx budget source" means a source that includes one (1) or more NOx budget units.

(158) [~~(160)~~] "NOx Budget Trading Program" means the multistate NOx air pollution control and emission reduction program established and administered by the U.S. EPA under 40 C.F.R. 51.121 or 52.34, as a means of mitigating the interstate transport of O_3, O_3 precursors, and NOx.

(159) [~~(161)~~] "NOx budget unit" means a unit that is subject to the NOx Budget Trading Program emissions limitation under 401 KAR 51:160 or 40 C.F.R. 96.80.

(160) [~~(162)~~] "NOx budget unit operator" means a person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn and includes a holding company, utility system, or plant manager of a NOx budget unit or source.

(161) [~~(163)~~] "NOx budget unit owner" means:

(a) A holder of a portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement and[~~. However,~~] unless expressly provided for in a leasehold agreement, does [~~NOx budget unit owner shall~~] not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 401 KAR 51:195 is submitted and not denied or withdrawn; or

(d) For any general account, a person who has an ownership interest with respect to the NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership.

(162) [~~(164)~~] "O_2" means oxygen.

(163) [~~(165)~~] "O_3" means ozone.

(164) [~~(166)~~] "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(165) [~~(167)~~] "Operating" means, for a NOx budget unit, having documented heat input for more than 876 hours in the six (6) months immediately preceding the submission of an application for an initial NOx budget permit.

(166) [~~(168)~~] "Operator" means, for a NOx budget unit, any person who operates, controls, or supervises a NOx budget unit, a NOx budget source, or unit for which an application for a NOx budget opt-in permit is submitted and not denied or withdrawn, and includes any holding company, utility system, or plant manager of the unit or source.

(167) [~~(169)~~] "Opt-in" means to be elected to become a NOx budget unit under the NOx Budget Trading Program through a final NOx budget opt-in permit.

(168) [~~(170)~~] "Owner" means, for a NOx budget unit, the follow-

ing persons:

(a) A holder of any portion of the legal or equitable title in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn;

(b) A holder of a leasehold interest in a NOx budget unit or in a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. Part 96.83 is submitted and not denied or withdrawn;

(c) A purchaser of power from a NOx budget unit or from a unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner does not include a passive lessor, or a person who has an equitable interest through the lessor, whose rental payments are not based upon the revenues or income from the NOx budget unit or the unit for which an application for a NOx budget opt-in permit under 40 C.F.R. 96.83 is submitted and not denied or withdrawn; or

(d) With respect to a general account, a person who has an ownership interest with respect to NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership interest with respect to NOx allowances.

(169) [~~(171)~~] "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(170) [~~(172)~~] "oz" means ounce.

(171) [~~(173)~~] "Ozone depleting potential" or "ODP", as determined by consulting 40 C.F.R. Part 82, Subpart A, Appendices A and B, means the ratio of the total amount of ozone destroyed by a fixed amount of an ozone depleting substance to the amount of ozone destroyed by the same mass of trichloroflouromethane(CFC-11) in which the ozone depleting potential of CFC-11 is equal to one and zero tenths (1.0)[~~, CFC-11; i.e., the ODP of CFC-11 equals 1.0~~].

(172) [~~(174)~~] "Ozone depleting substance" or "ODS" means any chemical compound regulated under 40 C.F.R. Part 82 with decay products, after the photolysis of the ODS by short-wave ultraviolet light, that are able to catalyze the destruction of stratospheric ozone.

(173) [~~(175)~~] "PAL effective date" means:

(a) The date of issuance of the PAL permit; or

(b) For an increased PAL, the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(174) [~~(176)~~] "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(175) [~~(177)~~] "PAL major modification" means any physical change in or a change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(176) [~~(178)~~] "PAL permit" means the permit issued by the cabinet that establishes a PAL for a major stationary source.

(177) [~~(179)~~] "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(178) [~~(180)~~] "Particulate matter" means a material, except uncombined water that exists in a finely divided form as a liquid or a solid measured by an approved test method.

(179) [~~(181)~~] "Particulate matter emissions" means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP [~~approved state implementation plan~~].

(180) [~~(182)~~] "Peak load" means the maximum instantaneous operating load.

(181) [~~(183)~~] "Permitted capacity factor" means the annual permitted fuel use divided by the manufacturer's specified maximum fuel consumption multiplied by 8,760 hours per year.

(182) [~~(184)~~] "Person" is defined by KRS 224.01-010(17).

(183) [~~(185)~~] "Plant-wide applicability limitation" or "PAL" means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and is established source-wide in accordance with 401 KAR 51:017 or 51:052[~~, Section 23 or 401 KAR 51:052, Section 14~~].

(184) [~~(186)~~] "$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths [~~two-and-a-half~~] (2.5) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix L, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(185) [~~(187)~~] "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix J and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

(186) [~~(188)~~] "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method[~~,~~] or an equivalent or alternative method, specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP [~~approved state implementation plan~~].

(187)[~~(189) "Pollution control project" or "PCP" means an activity, set of work practices, or project, including pollution prevention, undertaken at an existing emissions unit that reduces emissions of air pollutants from that unit in accordance with 401 KAR 51:017, Section 22 or 401 KAR 51:052, Section 13. Qualifying activities or projects include:~~

~~(a) Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2;~~

~~(b) Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants;~~

~~(c) Flue gas recirculation, low-NOx burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion for internal combustion (IC) engines, and oxidation-absorption catalyst for control of NOx;~~

~~(d) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of VOCs or HAPs;~~

~~(e) An activity or project to accommodate switching, or partially switching, to an inherently less polluting fuel, to be limited to the following:~~

~~1. Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five one-hundredths (0.05) percent sulfur diesel;~~

~~2. Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;~~

~~3. Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of unclean wood;~~

~~4. Switching from coal to #2 fuel oil with a five-tenths (0.5) percent maximum sulfur content; and~~

~~5. Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths (1.2) percent sulfur content; and~~

~~(f) Activities or projects undertaken to accommodate switching from the use of an ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate an activity or project described in subparagraphs 1 and 2 of this paragraph.~~

~~1. The productive capacity of the equipment is not increased as a result of the activity or project; and~~

~~2. The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS, determined by:~~

~~a. Determining the ODP of the substances by consulting 40 C.F.R. Part 82, Subpart A, Appendices A and B;~~

~~b. Calculating the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS;~~

~~c. Calculating the projected ODP-weighted amount by multiplying the projected annual usage of the new substance by its ODP;~~

~~and~~

~~d. If the value calculated in clause b of this subparagraph is more than the value calculated in clause c of this subparagraph, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.~~

~~(190)~~] "Pollution prevention" means any activity that through process changes, product reformulation or redesign or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants to the environment, including fugitive emissions, prior to recycling, treatment, or disposal and does not include recycling, other than certain in-process recycling practices, energy recovery, treatment, or disposal.

(188) [~~(191)~~] "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(189) [~~(192)~~] "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(190) [~~(193)~~] "Potential to emit" or "PTE" means:

(a) The maximum capacity of a stationary source to emit a pollutant under its physical and operational design, in which [~~where~~]:

1. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is[~~shall be~~] treated as part of its design if the limitation is enforceable as a practical matter; and

2. This definition does not alter or affect the use of this term for other purposes of the Clean Air Act, 42 U.S.C. 7401-7671q, or the term "capacity factor" as used in the Acid Rain Program.

(b) For the PSD and NSR programs, the maximum capacity of a stationary source to emit a pollutant under its physical or operational design, in which [~~where~~]:

1. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation or the effect it would have on emissions:

a. Is federally enforceable; or

b. For an actuals PAL, is federally enforceable or enforceable as a practical matter; and

2. Secondary emissions are not counted.

(191) [~~(194)~~] "ppb" means parts per billion.

(192) [~~(195)~~] "ppm" means parts per million.

(193) [~~(196)~~] "ppm(w/w)" means parts per million (weight by weight).

(194) [~~(197)~~] "Precalciner kiln" means a kiln in which [~~where~~] the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that forms clinker.

(195) [~~(198)~~] "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters, such as control device secondary voltages and electric currents, and to monitor control device operational perameters [~~other information~~], such as gas flow rate, ozone or carbon dioxide concentrations, and to calculate and record the mass emissions rate on a continuous basis.

(196)[~~(199)~~] "Preheater kiln" means a kiln in which where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(197)[~~(200)~~] "Prevention of Significant Deterioration Program" or "PSD Program" means a major source preconstruction program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.166 or 52.21.

(198)[~~(201) "Primary pollutant" means a regulated NSR pollutant for which a pollution control project is undertaken to reduce emissions of that pollutant.~~

~~(202)~~] "Project" means a physical change in or change in method of operation of an existing major stationary source.

(199)[~~(203)~~] "Projected actual emissions" means:

(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one (1) ~~of~~ the five (5) years, in a twelve (12) month period, following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if:

1. The project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; and

2. Full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) To determine projected actual emissions, before beginning actual construction, the owner or operator of the major stationary source:

1.a. Considers all relevant information, including historical operational data and the company's own representations of expected and highest projected business activity,[;] filings with the cabinet and the U.S. EPA,[;] and compliance plans under the Kentucky SIP;

b. Includes fugitive emissions and emissions associated with startups, shutdowns, and malfunctions; and

c. Excludes, in calculating any increase in emissions that results from a project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the project, including any increased utilization due to product demand growth; or

2. Elects to use the emissions unit's potential to emit, in tons per year, instead of using subparagraph 1 of this paragraph to determine projected actual emissions.

(200)[~~(204)~~] "psia" means pounds per square inch absolute.

(201)[~~(205)~~] "psig" means pounds per square inch gage.

(202)[~~(206)~~] "RACT/BACT/LAER Clearinghouse" or "RBLC" means the U.S. EPA's online collection of previous RACT/BACT/LAER determinations.

(203)[~~(207)~~] "Reactivation of a very clean coal-fired EUSGU" means a physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:

(a) Has not been in operation for the two (2) year period between November 15, 1988, and November 15, 1990, and the emissions from that unit continue to be carried in the Kentucky emissions inventory after November 15, 1990;

(b) Was equipped prior to shutdown with a continuous system of emissions control achieving a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;

(c) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(d) Is otherwise in compliance with the requirements of 42 U.S.C. 7401 to 7671q.

(204)[~~(208)~~] "Reasonable further progress" means annual incremental reductions in emissions of the relevant air pollutant as required by 42 U.S.C. 7501 to 7515 or may reasonably be required by the U.S. EPA for the purpose of ensuring the attainment of the applicable ambient air quality standard by the applicable date specified.

(205)[~~(209)~~] "Reconstruction" means the replacement of components of an existing affected facility to the extent that:

(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and

(b) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65.

(206)[~~(210)~~] "Reference method" means a method of sampling and analyzing for an air pollutant as published in 40 C.F.R. Part 50, Appendices A to N; 40 C.F.R. Part 53; 40 C.F.R. Part 60, Appendices A and B; 40 C.F.R. Part 61, Appendix B; or 40 C.F.R. Part 63, Appendices A to D.

(207)[~~(211)~~] "Regulated NSR pollutant" means the following:

(a) A pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such

pollutants identified by the U.S. EPA;

(b) A pollutant [~~that is~~] subject to any standard promulgated under 42 U.S.C. 7411;

(c) A pollutant [~~that is~~] subject to a standard promulgated under or established by 42 U.S.C. 7671 to 7671q; or

(d) A pollutant that otherwise is subject to regulation under 42 U.S.C. 7401 to 7671q, except that any hazardous air pollutant (HAP) listed in 42 U.S.C. 7412 or added to the list pursuant to 42 U.S.C. 7412(b)(2), that has not been delisted pursuant to 42 U.S.C. 7412(b)(3), is not a regulated NSR pollutant unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under 42 U.S.C. 7408.

(208)[~~(212)~~] "Replacement unit" means an emissions unit that does not generate creditable emissions reductions by shutting down the existing emissions unit that is replaced, and that:

(a)1. Is a reconstructed unit within the meaning of 40 C.F.R. 60.15(b)(1) or that completely takes the place of an existing emissions unit;

2. Is identical to or functionally equivalent to the replaced emissions unit; and

3. Does not alter the basic design parameters of the process unit.

(b) Replaces a unit that:

1. Is permanently removed from the major stationary source, is otherwise permanently disabled, or is prohibited from operating by a permit that is enforceable as a practical matter; and

2. If brought back into operation, is considered a new emissions unit.

(209)[~~(213)~~](a) "Repowering" means:

(a)[~~1.~~] Replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies:

1. Atmospheric or pressurized fluidized bed combustion;

2. Integrated gasification combined cycle;

3. Magneto hydrodynamics;

4. Direct and indirect coal-fired turbines;

5. Integrated gasification fuel cells; or

6. Pursuant to 40 C.F.R. 51.166, as determined by the U.S. EPA in consultation with the Secretary of Energy:

a. A derivative of one (1) or more of the technologies listed in subparagraphs 1 to 5 of this paragraph; or

b. Another technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(b) [~~atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magneto hydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the U.S. EPA in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, or another technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; and~~

~~2.~~] An oil or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Department of Energy.

(c)[~~(b)~~] A permit application from a source pursuant to this subsection receives [~~that satisfies this definition shall receive~~] expedited consideration by the cabinet and is granted an extension under 42 U.S.C. 7651h.

(210)[~~(214)~~] "Responsible official" means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly-authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25,000,000 in second quarter 1980 dollars; or

2. The delegation of authority to the representative is approved in advance by the cabinet pursuant to this subsection;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. The principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(211)[~~(215)~~] "Run" means the net period of time, either intermittent or continuous within the limits of good engineering practice, when an emission sample is collected.

(212)[~~(216)~~] "S" means at standard conditions.

(213)[~~(217)~~] "sec" means second.

(214)[~~(218)~~] "Secondary emissions" means emissions that:

(a) Occur as a result of the construction or operation of a major stationary source or major modification, and do not come from the major stationary source or major modification itself;

(b) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification that causes the secondary emissions;

(c) Include emissions from an offsite support facility that would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and

(d) Do not include emissions that come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or vessel.

(215)[~~(219)~~] "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(216)[~~(220)~~] "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(217)[~~(221)~~] "Shutdown" means the cessation of an operation.

(218)[~~(222)~~] "Significant" means:

(a) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate matter emissions
	15 tpy of PM_{10} emissions
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2×10^{-6} megagrams per year (Mg/y) (3.5×10^{-6} tpy)
Municipal waste combustor metals (measured as particulate matter)	14 Mg/y (15 tpy)

Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	36 Mg/y (40 tpy)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	35 Mg/y (50 tpy)

(b) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in the table in paragraph (a) of this subsection, any emissions rate.

(c) For 401 KAR 51:017, in reference to an emissions rate or a net emissions increase associated with a major stationary source or major modification, that is to be constructed within ten (10) kilometers of a Class I area, an impact on that area equal to or greater than one (1) $\mu g/m^3$ over a twenty-four (24) hour average.

(d) For 401 KAR 51:052, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

POLLUTANT	EMISSIONS RATE
Carbon monoxide	100 tons per year (tpy)
Ozone depleting substance	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

(e) For 401 KAR 51:052, with the exception of the significant emissions rate for ozone in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions that exceeds the following:

1. Twenty-five (25) tons per year of volatile organic compounds or nitrogen oxides in a serious or severe ozone nonattainment area; or

2. Any increase in actual emissions of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area.

(f) For 401 KAR 51:052, with the exception of the significant emissions rate for carbon monoxide in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions of carbon monoxide that equals or exceeds fifty (50) tons per year in a serious nonattainment area for carbon monoxide in which a stationary source contributes significantly to carbon monoxide levels.

(219)[~~(223)~~] "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is equal to or greater than the emission level that is significant for that pollutant.

(220)[~~(224)~~] "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the applicable significant level as defined in subsection (218) of[~~subsection (221) of~~] this section or in 42 U.S.C. 7401 to 7671q, whichever is lower for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

(221)[~~(225)~~] "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the PAL pollutant's applicable significant level as defined in subsection (218) of [~~subsection (220) of~~] this section; or in 42 U.S.C. 7401 to 7671q, whichever is lower.

(222)[~~(226)~~] "SO_2" means sulfur dioxide.

(223)[~~(227)~~] "Source" means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

(224)[~~(228)~~] "sq" means square.

(225)[~~(229)~~] "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(226)[~~(230)~~] "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65 [~~the administrative regulations of the Division for Air Quality~~] or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(227)[~~(231)~~] "Standard conditions" means:

(a) For source measurements, twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg).

(b) For air quality determinations, twenty-five (25) degrees Celsius (seventy-seven (77) degrees Fahrenheit) and a reference pressure of 760 mm Hg (29.92 in. of Hg).

(228)[~~(232)~~] "Start-up" or "start-up" means the setting in operation of an affected facility.

(229)[~~(233)~~] "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410 that has been approved by the U.S. EPA.

(230)[~~(234)~~] "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

(231)[~~(235)~~] "Submit" means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.

(232)[~~(236)~~] "TAPPI" means Technical Association of the Pulp and Paper Industry.

(233)[~~(237)~~] "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project [~~that is~~] operated for a period of five (5) years or less and that complies with the Kentucky SIP and with other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

(234)[~~(238)~~] "Ton" or "tonnage" means, for a NOx budget source, a short ton or 2,000 pounds. For determining compliance with the NOx budget emissions limitation, total tons for a control period is calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40 C.F.R. Part 96, Subpart H with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(235)[~~(239)~~] "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

(236)[~~(240)~~] "tpy" means tons per year.

(237)[~~(241)~~] "TSS" means total suspended solids.

(238)[~~(242)~~] "Uncombined water" means water that can be separated from a compound by ordinary physical means and that is not bound to a compound by internal molecular forces.

(239)[~~(243)~~] "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

(240)[~~(244)~~] "Urban county" means a county that is a part of an urbanized area with a population [~~of~~] greater than 200,000 based upon the 1980 census. If a portion of a county is [~~shall be~~] a part of an urbanized area, then the entire county is[~~shall be~~] classified as urban for 401 KAR Chapters 50 to 65[~~the administrative regulations of the Division for Air Quality~~].

(241)[~~(245)~~] "Urbanized area" means an area defined by the U.S. Department of Commerce, Bureau of Census.

(242)[~~(246)~~] "U.S. EPA" means the United States Environmental Protection Agency.

(243)[~~(247)~~] "UTM" means Universal Transverse Mercator.

(244)[~~(248)~~] "Visibility impairment" means a humanly perceptible change in visibility such as visual range, contrast, or coloration, from that which would have existed under natural conditions.

(245)[~~(249)~~] "Volatile organic compound" or "VOC" is defined in 40 C.F.R. 51.100(s).

(246)[~~(250)~~] "yd" means yard.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Industrial Classification Manual", 1987, as published by the Office of Management and Budget[~~";~~

~~(b) "40 C.F.R. Part 82, Appendix A to Subpart A of Part 82 - Class I Controlled Substances, as published in the Code of Federal Regulations, July 1, 2003"; and~~

~~(c) "40 C.F.R. Part 82, Appendix B to Subpart A of Part 82 - Class II Controlled Substances, as published in the Code of Federal Regulations, July 1, 2003"~~].

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the following main and regional of-

fices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:

(a) Kentucky Division for Air Quality, 200 Fair Oaks Lane, 1st floor [~~803 Schenkel Lane~~], Frankfort, Kentucky 40601-1403, (502) U564-3999 [~~573-3382~~];

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358

(f) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(g)[~~(f)~~] London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h)[~~(g)~~] Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304;

(i)[~~(h)~~] Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468; and

(j)[~~(i)~~] Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358.

(3)(a) The Standard Industrial Classification Manual is also available under Order No. PB 87-100012 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, phone (703) 487-4650. [~~(b) Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Attn: New Orders, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, phone (202) 512-1800, fax (202) 512-2250.~~]

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, December 14, 2009)

401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

RELATES TO: KRS 224.20-100(5), 224.20-110, 224.20-120, 40 C.F.R. Part 51 Appendix S, Part 51 Subpart 1, 51.165, 51.166, 51.300, 51.307, 52.21, 60, 61, 70.6[~~, Subpart I, 51.165, 51.166~~][~~(g)~~][~~, 52.21,~~] [~~52.21(r),~~] [~~60, 61,~~] 81, Subpart D, 81.318, 42 U.S.C. 7401-7671q, EO 2009-538 [~~7401-7626, 7407(d)(1)(A)(i), (ii), and (iii), 7410~~]

STATUTORY AUTHORITY: KRS 224.10-100(5), [~~40 C.F.R. 51.165,~~] 42 U.S.C. 7401-7671q, EO 2009-538 [~~(Clean Air Act)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the [~~requires the Environmental and Public Protection~~] cabinet to promulgate administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation establishes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained. The provisions of this administrative regulation are neither different nor more stringent than the federal regulation 40 C.F.R. 51.165.

Section 1. Applicability. This administrative regulation shall apply to the construction of a new major stationary source or a [~~any~~] project that is a major modification at an existing major stationary source, which commences construction after September 22, 1982, and locates in or impacts upon an area designated nonattainment under 42 U.S.C. 7407(d)(1)(A)(i).

(1) The provisions of this administrative regulation relating to visibility protection shall also apply to major sources or major modifications in nonattainment areas that potentially have an impact on visibility in a mandatory Class I federal area.

(2) Applicability tests for projects. Except as provided in subsection (3) [~~subsections (3) or (4)~~] of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase, as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed or modified according to subparagraphs 1 to 3[4] of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. [~~Emissions test for projects that involve clean units. For a project that will be constructed and operated at a clean unit as provided in Sections 11 and 12 of this administrative regulation, without causing the unit to lose its clean unit designation, an emissions increase shall not be deemed to occur.~~

~~4.~~] Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using the methods specified in subparagraphs 1 and 2 [~~to 3~~] of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable test in paragraph (a) of this subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1(144) and (218)[~~(146)~~].

(3) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 11 [~~14~~] of this administrative regulation. [~~(4) An owner or operator undertaking a pollution control project (PCP) shall comply with Section 13 of this administrative regulation.~~]

Section 2. Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance.

(a) The cabinet shall examine each proposed major new source and proposed major modification to determine if the source or modification will meet all applicable emissions requirements in the Kentucky State Implementation Plan (SIP) and 40 C.F.R. Parts 60 and 61.

(b) If the cabinet determines from the application and all other available information that the proposed source or modification will not meet the applicable emissions requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact.

(a) The cabinet shall determine if a proposed major stationary source or major modification will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major.

(b) If a designated nonattainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source will not cause a new violation.

(3) Fugitive emissions sources. Sections 4 and 10 of this administrative regulation shall not apply to a source or modification that will be a major stationary source or major modification only if

fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to one (1) of the following categories:

(a) Coal cleaning plants with thermal dryers;
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants, furnace process;
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140;
(u) Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
(aa) Another stationary source category that[~~which~~], as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

Section 3. Sources Locating in Designated Attainment or Unclassifiable Areas that Will Cause or Contribute to a Violation of a National Ambient Air Quality Standard. (1) This section shall apply only to new major stationary sources or new major modifications that will locate in designated attainment or unclassifiable areas, pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii), if the source or modification will cause impacts that exceed the significance levels, as listed in the table in this subsection, at a locality that does not or will not meet the national ambient air quality standards.

Pollutant	Annual Average	Averaging Time			
		24-Hour	8-Hour	3-Hour	1-Hour
Sulfur Dioxide	1.0 ug /m ^{3}	5 ug /m^3	--	25 ug /m^3	--
PM_{10}	1.0 ug /m^3	5 ug /m^3	--	--	--
Nitrogen Dioxide	1.0 ug /m^3	--	--	--	--
Carbon Monoxide	--	--	0.5 mg/m^3	--	2 mg/m^3

(2) Sources to which this section applies shall meet the requirements in Section 4(1), (2) and (4) of this administrative regulation and may be exempt from Section 4(3) of this administrative regulation.

(3) For sources of sulfur dioxide (SO_2), particulate matter, and carbon monoxide (CO), the determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model listed in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality Models".

(4) For sources of NOx, the initial determination that a new major source or major modification will cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide (NO_2) shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO_2 by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOCs or NOx locating outside a designated ozone nonattainment area shall be presumed to not have a [~~no~~] significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, the source shall be permitted pursuant to [~~under the applicable provisions of~~] this administrative regulation and 401 KAR 52:020 until the area is designated nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(6) The determination that a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas, the operation of which will cause a new violation of a national ambient air quality standard but will not contribute to an existing violation, may be approved only if the following conditions are met:

(a) The new source shall:
1. Meet an emissions limitation;
2. Meet a design, operational, or equipment standard; or
3. Control existing sources so that the new source will not cause a violation of a national ambient air quality standard.

(b) The new emissions limitations for the new and existing sources affected shall be state and federally enforceable in accordance with Section 6 of this administrative regulation.

Section 4. Sources Locating in a Designated Nonattainment Area. This section shall apply to a new major stationary source or major modification that will be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major. Approval to construct may be granted only if the conditions of this section are met.

(1) The new major source or major modification shall be required to meet an emissions limitation that specifies the lowest achievable emissions rate (LAER) for the source.

(2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant, or an entity controlling, controlled by, or under common control with the applicant, in the Commonwealth of Kentucky are in compliance with all applicable emissions limitations and standards specified in Title 401, Chapters 50 to 65[~~63~~], and 40 C.F.R. Parts 60 and 61 and 42 U.S.C. 7401-7626, or are in compliance with an expeditious state and federally enforceable compliance schedule or a court decree establishing a compliance schedule.

(3)(a) Except for VOCs or NOx emissions, emissions from existing sources in the affected area of the proposed new major source or modification, whether or not under the same ownership, shall be reduced[~~,~~] or offset, so that there will be reasonable further progress toward attainment of the applicable national ambient air quality standard (NAAQS). Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(b) The ratio of total emissions reductions of VOCs or NOx to total increased emissions of the same air pollutant shall be at least the ratio indicated for the following ozone nonattainment area classifications:
1. For marginal nonattainment areas, at least 1.1 to 1;
2. For moderate nonattainment areas, at least 1.15 to 1;
3. For serious nonattainment areas, at least 1.2 to 1;
4. For severe nonattainment areas, at least 1.3 to 1; and
5. For extreme nonattainment areas, at least 1.5 to 1.

(4) The emissions reductions shall provide a positive net air quality benefit in the affected area.

(a) Atmospheric simulation modeling shall not be required for VOCs and NOx.

(b) Except as provided in Section 3(5) of this administrative regulation, compliance with subsection (3) of this section and Section 5(3)(e) of this administrative regulation shall be adequate to meet this condition.

(5) The proposed major stationary source or major modification shall include in the application for a construction permit an analysis of the alternative sites, sizes, production processes, and environmental control techniques for the proposed source, which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 5. Determining Credit for Emissions Offsets. (1) The baseline for determining credit for emissions reductions or offsets shall be, **considering that**[~~where~~] baseline actual emissions as defined in 401 KAR 51:001, Section 1(20), shall not be used for determining the baseline for emissions offsets:

(a) The emissions limitations in effect when [~~at the time~~] the application to construct or modify a source is filed; or

(b) The actual emissions of the source from which offset credit is attained if:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards for the SIP was based on actual emissions; or

2. The SIP does not contain an emissions limitation for that source or source category.[~~(c) Baseline actual emissions as defined in 401 KAR 51:001, Section 1(20), shall not be used for determining the baseline for emissions offsets.~~]

(2) Credit for emissions offsets. Credit for emissions offset purposes may be allowed for existing control if the existing control[~~that~~] goes beyond the control required under 401 KAR Chapters 50 to 65 and applicable [~~68 and existing~~] federal regulations.

(3) General provisions for calculating offset values.

(a) Offset calculations shall be made on a pound-per-hour basis if all facilities involved in the emissions offset calculations are operating at their maximum or allowed production rate.

(b) Offsets may be calculated on a tons-per-year basis if baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period.

(c) If the cabinet requires certain hardware controls instead of an emissions limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(d) If the emissions limitations required by the cabinet allow greater emissions than the uncontrolled emissions rate of the source, emissions offset credit shall be allowed only for control below the uncontrolled emissions rate.

(e) The owner or operator of a new or modified major stationary source shall comply with any offset requirement in effect under this administrative regulation to increase emissions of an air pollutant by:

1. Obtaining emissions reductions of the air pollutant from the same source or other sources in the same nonattainment area; or

2. From sources in another nonattainment area if:

a. The other area has an equal or higher nonattainment classification than the area in which the source is located; and

b. Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

(4) Calculating offsets if an [~~no~~] applicable emissions limitation does not exist [~~exists~~]. If the Kentucky SIP does not contain an emissions limitation for a source or source category, the emissions offset baseline involving the source shall be actual emissions determined under actual operating conditions for the previous two (2) year period.

(5) Calculating offsets for existing fuel combustion sources.

(a) The emissions for determining emissions offset credit involving an existing fuel combustion source shall be the allowable emissions under the emissions limitation requirements of the cabinet for the type of fuel being burned when [~~at the time~~] the new major source or major modification application is filed.

(b) If the existing source has switched to a different type of fuel at some earlier date, a resulting emissions reduction, either actual or allowable, shall not be used for emissions offset credit.

(c) If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable emissions for the fuels involved shall not be allowed unless the permit is conditioned to require the use of a specified alternative control measure that will achieve the same degree of emissions reduction if the source switches back to a dirtier fuel at some later date.

(6) Calculating offsets for operating hours and source shutdowns.

(a) A source may be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if the work force to be affected has been notified in writing of the proposed shutdown or curtailment.

(b) Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emissions offset credit.

(c) If an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for the [~~such~~] shutdown or curtailment may be applied to offset emissions from the new source.

(7) Calculating offsets for hydrocarbon substitution. An emissions offset credit shall be allowed for replacing one volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane, or trichlorofluoroethane.

(8) Banking of emissions offset credit.

(a) New sources obtaining permits by applying offsets after the effective date of this administrative regulation may bank offsets that exceed the requirements of Section 5(3) of this administrative regulation.

(b) An owner or operator of an existing source that reduces its own emissions may bank a resulting reduction beyond those required by regulation for use under this administrative regulation, even if the offsets are applied immediately to a new source permit.

(c) Banked emissions offsets may be used under the preconstruction review program required in 42 U.S.C. 7401 to 7626, as long as these banked emissions are identified and accounted for in Kentucky's control strategy.

(9) Offset credit for meeting NSPS or NESHAPS.

(a) If a source is subject to an emissions limitation established in a New Source Performance Standard (NSPS) or a National Emissions Standard for Hazardous Air Pollutants (NESHAPS) and a different emissions limitation is required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emissions offsets.

(b) The difference in emissions between NSPS or NESHAPS and other emissions limitations shall[~~may~~] not be used as offset credit.

Section 6. Administrative Procedures for Emissions Offsets. (1) Emission reductions shall be enforceable by the cabinet and the U.S. EPA, and shall be accomplished by the start-up date of the new source.

(a) If emissions reductions are to be obtained in a state that neighbors the Commonwealth for a new source to be located in the Commonwealth, the emissions reductions shall be enforceable by the neighboring state or local agencies and the U.S. EPA.

(b) The necessary emissions offsets may be proposed by the owner of the proposed source or by the cabinet.

(2) Source initiated emissions offsets.

(a) The owner or operator of a source may propose:

1. Internal emissions offsets, which involve reductions from sources controlled by the owner; or

2. External emissions offsets, which involve reductions from other sources, if the emissions offsets meet the requirements of this section and Section 4(3) of this administrative regulation.

(b) An internal emissions offset shall be included and made enforceable as a condition of the source's permit.

(c) An external emissions offset shall only be accepted if the cabinet requires the affected source to comply with a new emissions limitation to ensure that its emissions shall be reduced by a specified amount in a specified time; and the new emissions limitation shall be enforceable by the cabinet and the U.S. EPA.

(3) Cabinet initiated emissions offsets.

(a) The cabinet may commit to reducing emissions from mobile sources and other existing sources to provide a net air quality benefit in the impact area of a proposed new source to accommodate the proposed new source.

(b) This emissions reduction commitment shall be reflected in the emissions limitation requirements for the new and existing sources as required by this section.

Section 7. Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52:020 or under the terms of an approval to construct.

(2)(a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval;

2. Is discontinued for a period of eighteen (18) months or more; or

3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory demonstrating [~~showing~~] that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project; and

2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with applicable provisions of 401 KAR Chapters 50 to 65 and other applicable [~~63 and any other~~] requirements under local, state, or federal law.

(4) If a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, the requirements of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5)(a) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a clean unit or at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and

2. The owner or operator uses the method specified in 401 KAR 51:001, Section 1(199)(b)[~~(202)(b)~~] to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions units for which emissions of a regulated NSR pollutant may be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:

a. Baseline actual emissions;

b. Projected actual emissions;

c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and

d. Any applicable netting calculations.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by an emissions unit identified in paragraph (a)2 of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for:

a. Five (5) years following resumption of regular operations after the change; or

b. Ten (10) years if the project increases the design capacity of or potential to emit for that regulated NSR pollutant at the emissions unit.

(d) If the unit is an existing EUSGU, before beginning actual construction, the owner or operator:

1. Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet; and

2. Shall not be required to obtain a determination from the cabinet before beginning actual construction; and

3. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that contains the unit's annual emissions during the calendar year preceding report submittal.

(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:

a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceed the baseline actual emissions, as documented and maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for that regulated NSR pollutant; and

b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b)3 of this subsection.

2. The report shall be submitted to the cabinet within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:

a. The name, address, and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and

c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 8. Permit Condition Rescission. (1) An owner or operator holding a permit for a stationary source or modification that[~~which~~] was issued pursuant to 401 KAR 51:050 or 401 KAR 51:051E may request that the cabinet rescind the applicable conditions.

(2) The cabinet shall rescind a permit condition if the owner or operator:

(a) Requests and [~~requested and the applicant~~] demonstrates to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification if construction will have commenced after September 22, 1982;[~~,~~] and

(b) Demonstrates [~~if the owner or operator demonstrates~~] that the rescission will not violate the requirements of Sections 4(3) and 7 of this administrative regulation.

Section 9. Class I Areas. (1) The following areas, which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks which exceed 5,000 acres in size; and

(c) National parks that exceed 6,000 acres in size.

(2) Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

(3) The visibility protection requirements of this administrative regulation shall apply only to sources that may impact a mandatory Class I federal area.

(4) The following areas may be redesignated only as Class I or

II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 10. Protection of Visibility. (1) New source review;[-] applicability and exemptions.

(a) A stationary source or modification to which this section applies shall not begin actual construction without a permit that states the stationary source or modification shall meet the requirements of this section.

(b) This section shall apply to construction of a new major stationary source or major modification that will be constructed in an area designated as nonattainment under 42 U.S.C. 7407(d)(1)(A)(i) and potentially have an impact on visibility in a Class I area.

(c) This section shall apply to a major stationary source or major modification for each pollutant subject to regulation under 42 U.S.C. 7401 to 7626 that it will emit, except as provided in paragraphs (d) and (e) of this subsection.

(d) This section shall not apply to a particular major stationary source or major modification if:

1. The source or modification is a nonprofit health or nonprofit educational institution[,] or a major modification will occur at the institution, and the Governor of the Commonwealth requests that it be exempt from the requirements of this section; and

2. The source is a portable stationary source that has previously received a permit under this section and will be temporarily relocated; and

(a)[,] The emissions from the source will not exceed the allowable emissions;

b. The emissions from the source will not impact a Class I area or an area where an applicable increment is known to be violated; and

c. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. The notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet pursuant to this section.

(e) This section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Will not impact a Class I area;

2. Will not impact an area where an applicable increment is known to be violated; and

3. Will be temporary.

(2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impairment to visibility that will occur in a Class I area as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification.

(3) Federal land manager notification.

(a) The federal land manager and the federal official charged with direct responsibility for management of Class I areas shall have an affirmative responsibility to protect the visibility and other air quality related values of the Class I lands and to consider, in consultation with the cabinet, if a proposed source or modification will have an adverse impact on these values.

(b) The cabinet shall provide written notification to all affected federal land managers and to the federal official charged with direct responsibility for management of lands within the Class I area of a permit application or an advanced notice of a permit application for a proposed new major stationary source or major modification that may affect visibility in a Class I area. The notification shall:

1. Include a copy of all information relevant to the permit application;

2. Be submitted pursuant to this paragraph [~~(b) of this subsection~~] within thirty (30) days of receipt of the permit application or advanced notice of permit application and at least sixty (60) days prior to a public hearing on the application for a permit to construct; and

3. Include an analysis of the proposed source's anticipated impacts on visibility in a Class I area.

(c)1. The cabinet shall consider an analysis by the federal land manager, provided within thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that the proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

2. If the cabinet finds that the analysis does not demonstrate, to the satisfaction of the cabinet, that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public hearing notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation can be obtained.

(d) Adverse impact on visibility as it applies to paragraph (c) of this subsection shall be determined on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and time of natural conditions that reduce visibility.

(4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100 in processing applications under this section and[~~. The cabinet~~] shall follow the procedures at 40 C.F.R. 52.21(r), effective [~~as in effect on~~] July 1, 2009[~~2003~~], to the extent that the procedures of 401 KAR 52:100 do not apply.

(5) National visibility goal.

(a) The cabinet shall only issue permits to those sources for which emissions will be consistent with making reasonable progress toward the national goal of preventing future, and remedying existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.

(b) In making the decision to issue a permit, the cabinet shall consider[~~may take into account the overriding factors of~~]:

1. The costs[~~cost~~] of compliance;

2. The time necessary for compliance;

3. The energy and nonair quality environmental impacts of compliance; and

4. The useful life of the source.

(6) Monitoring.

(a) The cabinet may require monitoring of visibility in a Class I area near the proposed new stationary source or major modification using human observations, teleradiometers, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA.

(b) The monitoring method selected shall be determined on a case-by-case basis by the cabinet.

(c) The cabinet shall not undertake visibility monitoring in a Class I area without the approval of the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

Section 11. [~~Clean Unit Test for Emissions Units that are Subject to LAER. For any emissions unit that is subject to LAER and for which the cabinet has issued a major NSR permit in the past ten (10) years, an owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at a clean unit is part of a project that is a major modification.~~

~~(1) General provisions for clean units.~~

~~(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.~~

~~(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:~~

~~1. After the effective date of the clean unit designation as determined according to subsection (3) of this section; and~~

~~2. Before the expiration date of the clean unit designation as determined according to subsection (4) of this section.~~

~~(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:~~

~~1. Cause the need for a change in the emissions limitations or~~

~~work practice requirements adopted in conjunction with LAER in the permit for the unit; and~~

~~2. Alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (5)(d) of this section.~~

~~(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions if:~~

~~1. The project causes the need for a change in the emissions limitations or work practice requirements that were determined in conjunction with LAER in the permit for the unit; or~~

~~2. The project will alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (5)(d) of this section.~~

~~(e) Clean unit designation shall end immediately before the time actual construction begins on a project that will cause a unit to lose its clean unit designation if the owner or operator begins actual construction on a project before applying for a permit revision.~~

~~(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(2)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit is not a clean unit.~~

~~(g)1. For emissions units with PSD permits, the BACT level of emissions reductions or work practice requirements shall satisfy the requirement for meeting LAER in subsections (3) to (8) of this section if:~~

~~a. The emissions unit has received a PSD permit that complies with BACT within the last ten (10) years; and~~

~~b. The emissions unit is located in an area that was redesignated as nonattainment for the relevant pollutant after the PSD permit is issued and before the SIP including the clean unit provisions become effective.~~

~~2. For these emissions units, the requirements for the LAER determination made under subsection (1)(c) of this section shall apply to the BACT permit terms and conditions.~~

~~3. The requirements of subsection (6)(a)3 of this section shall not apply to emissions units that qualify for clean unit status according to this paragraph.~~

~~(2) Qualifying or requalifying to use the clean unit applicability test.~~

~~(a) An emissions unit shall automatically qualify as a clean unit if the unit meets the requirements in this paragraph.~~

~~1. Permitting requirement. The owner or operator of an emissions unit shall have received a major NSR permit within the past ten (10) years and shall maintain and provide information upon request by the cabinet or U.S. EPA to demonstrate that this permitting requirement is met.~~

~~2. Qualifying air pollution control technologies requirement. Air pollutant emissions from the emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets the following requirements:~~

~~a. The control technology shall achieve the LAER level of emissions reductions determined by issuance of a major NSR permit within the past ten (10) years;~~

~~b. The emissions unit shall not be eligible for the clean unit designation if the LAER determination did not result in a requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type; and~~

~~c. The owner or operator shall have made an investment to install the control technology. An investment includes expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~(b) Requalifying for the clean unit designation. After the original clean unit designation expires or is lost, an emissions unit may requalify as a clean unit under the provisions of this paragraph or under Section 12 of this administrative regulation.~~

~~1. An owner or operator shall obtain a new major NSR permit or permit revision, as applicable, issued pursuant to 401 KAR 52:020 for an emissions unit that is requalifying for clean unit designation.~~

~~2. The permit shall require compliance with the current-day LAER, and the emissions unit shall meet the requirements in subsection (3)(a) of this section.~~

~~(3) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.~~

~~(a) The effective date for an original clean unit designation and for an emissions unit that requalifies as a clean unit by implementing a new control technology to meet current-day LAER shall be:~~

~~1. The earlier of the date the emissions unit's air pollution control technology is placed into service or three (3) years after the date the major NSR permit or permit revision is issued; and~~

~~2. No sooner than the date that provisions for clean units become effective in the Kentucky SIP.~~

~~(b) The effective date for emissions units that requalify for the clean unit designation using an existing control technology shall be the date the new major NSR permit or permit revision is issued.~~

~~(4) Clean unit expiration. The date that the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.~~

~~(a) For an emissions unit that automatically qualifies as a clean unit under subsection (2)(a) of this section or a unit that requalifies by implementing new control technology to meet current-day LAER, the expiration date of the clean unit designation shall be:~~

~~1. Ten (10) years after the effective date or ten (10) years after the date the equipment went into service, whichever is earlier; or~~

~~2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation pursuant to subsection (6) of this section.~~

~~(b) The clean unit designation for an emissions unit that requalifies for the clean unit designation using an existing control technology shall expire:~~

~~1. Ten (10) years after the effective date; or~~

~~2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in subsection (6) of this section.~~

~~(5) Required Title V permit content for a clean unit. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:~~

~~(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which this clean unit designation applies.~~

~~(b) The effective date of the clean unit designation.~~

~~1. If the exact effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.~~

~~(c) The expiration date of the clean unit designation.~~

~~1. If the exact expiration date is not known at the date the clean unit designation is initially recorded in the Title V permit, the permit shall describe the event that shall determine the expiration date;~~

~~2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~3. If originally absent for the Title V permit, the expiration date shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.~~

~~(d) All emissions limitations and work practice requirements adopted in conjunction with LAER and any physical or operational characteristics that formed the basis for the LAER determination.~~

~~(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pur-~~

~~suant to subsection (6) of this section.~~

~~(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (6) of this section.~~

~~(6) Maintaining the clean unit designation.~~

~~(a) The owner or operator of a clean unit shall conform to the provisions of this subsection to maintain the clean unit designation.~~

~~1. The clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with the LAER that are recorded in the major NSR permit and subsequently reflected in the Title V permit;~~

~~2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination;~~

~~3. The clean unit shall not emit above a level that has been offset.~~

~~4. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation; and~~

~~5. The clean unit shall continue to control emissions using the specific air pollution control technology that is the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.~~

~~(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant shall only affect the clean unit designation for that pollutant.~~

~~(7) Offsets and netting at clean units.~~

~~(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis or for generating offsets, unless:~~

~~1. Such use occurs before the effective date of the clean unit designation, or after the clean unit designation expires; or~~

~~2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.~~

~~(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation, if:~~

~~1. The unit reduces emissions below the level that qualified the unit as a clean unit; and~~

~~2. The reductions are surplus, quantifiable, and permanent.~~

~~(c) For generating offsets, reductions shall be federally enforceable.~~

~~(d) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~(8) Effect of area redesignation on clean units.~~

~~(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.~~

~~(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements currently applicable in the area, regardless of the area's original attainment status during the previous designation period.~~

~~Section 12. Clean Unit Provisions for Emissions Units that Achieve an Emissions Limitation Comparable to LAER. For an emissions unit that does not qualify as a clean unit under Section 11 of this administrative regulation but is achieving a level of emissions control comparable to LAER, the owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at the unit is part of a project that is a major modification.~~

~~(1) General provisions for clean units.~~

~~(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.~~

~~(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:~~

~~1. After the effective date of the clean unit designation as determined pursuant to subsection (4) of this section; and~~

~~2. Before the expiration date of the clean unit designation as determined pursuant to subsection (5) of this section.~~

~~(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:~~

~~1. Cause the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to LAER according to subsection (3) of this section; and~~

~~2. Alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER according to subsection (7)(d) of this section.~~

~~(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions, if~~

~~1. The project causes the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to LAER; or~~

~~2. The project will alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER.~~

~~(e) Clean unit designation shall end immediately before the time actual construction begins on a project that will cause a unit to lose its clean unit designation, if the owner or operator begins actual construction on a project before applying for a permit revision.~~

~~(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(2)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit were never a clean unit.~~

~~(2) Qualifying or requalifying to use the clean unit applicability test.~~

~~(a) An emissions unit shall qualify as a clean unit if the unit meets the requirements of this paragraph.~~

~~1. Qualifying air pollution control technology requirement. Air pollutant emissions from an emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, and the owner or operator shall:~~

~~a. Demonstrate that an emissions unit's control technology is comparable to LAER according to the requirements of subsection (3) of this section;~~

~~b. Demonstrate that an emissions unit's control technology reduces emissions below the level of a standard, uncontrolled emissions unit of the same type; and~~

~~c. Have made an investment to install the control technology. An investment shall include expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~2. Impact of emissions from the unit requirement. The allowable emissions from the emissions unit, as determined by the cabinet, shall not:~~

~~a. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or~~

~~b. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.~~

~~3. Date of installation requirement.~~

~~a. For control technology installed before provisions for clean units are effective in the Kentucky SIP, the owner or operator of an emissions unit with control technology on which clean unit designation is based, shall apply for clean unit designation within two (2) years after the requirements for clean units become effective in the Kentucky SIP.~~

~~b. For control technology installed after the provisions for clean units become effective in the Kentucky SIP, the owner or operator shall apply for clean unit designation at the time the control technology is installed.~~

~~(b) Requalifying as a clean unit. An emissions unit may requalify as a clean unit after the original clean unit designation expires or is lost according to provisions in subsections (6) and (7) of this section or under clean unit provisions in Section 11 of this administrative regulation.~~

~~1. The owner or operator shall obtain a new permit or permit revision pursuant to subsections (6) and (7) of this section and 401 KAR 52:020 that demonstrates the emissions unit's control technology is achieving a level of emissions control comparable to current-day LAER.~~

~~2. The emissions unit shall meet the requirements in subsection (2)(a)1 and 2 of this section.~~

~~(3) Demonstrating control effectiveness comparable to LAER. The owner or operator shall demonstrate that the emissions unit's control technology is comparable to LAER under the provisions of either paragraph (a) or (b) of this subsection.~~

~~(a) Comparison of the control technology to previous LAER determinations.~~

~~1. An emissions unit's control technology shall be presumed to be comparable to LAER if the control technology achieves an emissions limitation that is at least as stringent as one of the five best performing similar sources for which a LAER determination has been made within the preceding five (5) years and for which information has been entered into the RACT/BACT/LAER clearinghouse.~~

~~2. To determine the accuracy of any presumptive determination that an achieved-in-practice control technology is comparable to LAER, the cabinet shall:~~

~~a. Consider any information on achieved-in-practice pollution control technologies that is provided during the public comment period; and~~

~~b. Compare this presumption to any additional LAER determinations of which the cabinet is aware.~~

~~(b) The substantially-as-effective test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as LAER according to this paragraph. The cabinet:~~

~~1. Shall consider the evidence on a case-by-case basis that an owner or operator, and any other person during the public participation process, provides to the cabinet to demonstrate if the emissions unit's control technology is substantially as effective as LAER; and~~

~~2. Shall determine if the emissions unit's air pollution control technology is substantially as effective as LAER after considering the evidence.~~

~~(c) Time of comparison.~~

~~1. Emissions units with control technologies installed before provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed before the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to:~~

~~a. The LAER requirements that applied at the time the control technology was installed; or~~

~~b. The current-day LAER requirements.~~

~~2. Emissions units with control technologies installed after provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed after the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements.~~

~~(4) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be the later of:~~

~~(a) The date that the permit or permit revision required by subsection (6) of this section is issued; or~~

~~(b) The date that the emissions unit's air pollution control technology is placed into service.~~

~~(5) Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to this subsection.~~

~~(a) For an emissions unit with a clean unit designation based on a demonstration by the owner or operator that the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, the clean unit designation shall expire ten (10) years from the date the unit's control technology was installed.~~

~~(b) For all other emissions units, the clean unit designation shall expire ten (10) years from the effective date of the clean unit designation.~~

~~(c) The clean unit designation shall expire at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (8) of this section.~~

~~(6) Procedures for designating emissions units as clean units.~~

~~(a) The cabinet shall designate an emissions unit a clean unit by issuing a permit or permit revision under 401 KAR Chapter 52, including requirements for public notice of the proposed clean unit designation and opportunity for public comment; and~~

~~(b) The permit or permit revision shall meet the requirements of subsection (7) of this section.~~

~~(7) Required permit content. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:~~

~~(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which the clean unit designation applies.~~

~~(b) The effective date of clean unit designation.~~

~~1. If the effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revisions shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.~~

~~(c) The expiration date of clean unit designation.~~

~~1. If the expiration date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the expiration date;~~

~~2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and~~

~~3. If originally absent from the Title V permit, the expiration date shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.~~

~~(d) All emissions limitations and work practice requirements adopted in conjunction with emissions limitations necessary to assure the control technology continues to achieve an emissions limitation comparable to LAER and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER.~~

~~(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (8) of this section.~~

~~(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, according to subsection (8) of this section.~~

~~(8) Maintaining the clean unit designation.~~

~~(a) The owner or operator shall conform to the provisions of this subsection to maintain clean unit status.~~

~~1. To ensure that the control technology continues to achieve emissions control comparable to LAER, the clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with those that are comparable to LAER, which are recorded in the source's major NSR permit or permit revisions and subsequently reflected in the Title V permit that designates the unit as a clean unit.~~

~~2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to LAER.~~

~~3. The clean unit shall not emit above a level that has been offset.~~

~~4. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation.~~

~~5. The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.~~

~~(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one pollutant shall only affect the clean unit designation for that pollutant.~~

~~(9) Offsets and netting at clean units.~~

~~(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis or for offsets, unless:~~

~~1. Such use occurs before the date the clean unit provisions are effective in the Kentucky SIP or after the clean unit designation expires; or~~

~~2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.~~

~~(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation, if:~~

~~1. The unit reduces emissions below the level that qualified the unit as a clean unit; and~~

~~2. The reductions are surplus, quantifiable, and permanent.~~

~~(c) For generating offsets, reductions shall be federally enforceable.~~

~~(d) For determining creditable net emissions increases and decreases, the reductions shall be enforceable as a practical matter.~~

~~(10) Effect of area redesignation on clean units.~~

~~(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.~~

~~(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements that are currently applicable in the area, regardless of the area's original attainment status during the previous designation period.~~

~~Section 13. PCP Exclusion Procedural Requirements. For a project to qualify for a PCP exclusion, an owner or operator shall comply with the provisions of this section.~~

~~(1) To request a PCP designation for a project the owner or operator shall:~~

~~(a) Submit a notice to the cabinet before beginning actual construction for a project that is listed in the definition for "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); or~~

~~(b) Submit an application for a permit or permit revision and obtain approval to use the PCP exclusion from the cabinet according to subsection (5) of this section for a project that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f).~~

~~(2) The owner or operator for all projects that rely on the PCP exclusion shall perform:~~

~~(a) An environmentally-beneficial analysis.~~

~~1. The environmental benefit from the emissions reductions of pollutants regulated under 42 U.S.C. 7401 to 7671q (Clean Air Act) shall outweigh the environmental detriment of emissions increases in pollutants regulated under the Act; and~~

~~2. A statement that the project is implementing a technology from those listed in 401 KAR 51:001, Section 1(188)(a) to (f) shall satisfy the requirement in subparagraph 1 of this paragraph.~~

~~(b) Air quality analysis. The emissions increases from the project shall not:~~

~~1. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or~~

~~2. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.~~

~~(3) Content of notice or application for a permit or permit revision. The owner or operator shall include the following information in the notice or application for a permit or permit revision submitted to the cabinet for a PCP:~~

~~(a) A description of the project;~~

~~(b) The potential emissions increases and decreases of any pollutant regulated under the Act and the projected emissions increases and decreases that will result from the project;~~

~~(c) A copy of the environmentally-beneficial analysis required by subsection (2)(a) of this section;~~

~~(d) A description of all methods, including monitoring and recordkeeping, that shall be used on an ongoing basis to demonstrate that the project is environmentally beneficial and sufficient to meet the applicable requirements of 401 KAR Chapter 52;~~

~~(e) A certification that the project shall be designed and operated in a manner that is consistent with:~~

~~1. The proper industry and engineering practices;~~

~~2. The environmentally-beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;~~

~~3. The information submitted in the notice or permit application; and~~

~~4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.~~

~~(f) Demonstration that the PCP shall not have an adverse air quality impact.~~

~~1. The demonstration requirement may be satisfied with modeling, screening level modeling results, a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise as required by subsection (2)(b) of this section, or another method approved by the cabinet.~~

~~2. An air quality impact analysis shall not be required for any pollutant that will not experience a significant emissions increase from the project.~~

~~(4) Notice process for listed projects. The owner or operator:~~

~~(a) May begin actual construction of a PCP project immediately after notice is sent to the cabinet for projects listed in the definition of "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); and~~

~~(b) Shall respond to any requests by the cabinet for additional information necessary to evaluate the suitability of the project for a PCP exclusion.~~

~~(5) Permitting process for unlisted projects.~~

~~(a) The owner or operator shall not begin actual construction of a PCP that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f) until the cabinet approves and issues a permit or permit revision for the project according to 401 KAR 52:020. These procedures shall include the cabinet providing the public with:~~

~~1. Notice of the proposed approval;~~

~~2. Access to the environmentally-beneficial analysis and the air quality analysis; and~~

~~3. At least a thirty (30) day period for the public and the U.S. EPA to submit comments.~~

~~(b) The cabinet shall address all material comments received by the end of the comment period before taking final action on the permit or permit revision.~~

~~(6) Operational requirements. Upon installation of the PCP, the owner or operator shall comply with the requirements of this subsection.~~

~~(a) General duty. The owner or operator shall operate the PCP in a manner that is consistent with:~~

~~1. Proper industry and engineering practices;~~

~~2. The environmentally-beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;~~

~~3. Information submitted in the notice or application for a permit or permit revision required by subsection (3) of this section; and~~

~~4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.~~

~~(b) Recordkeeping. To prove that the PCP is operated consistent with the general duty requirements in paragraph (a) of this subsection, the owner or operator shall maintain copies on site, of:~~

~~1. The environmentally-beneficial analysis;~~

~~2. The air quality impacts analysis; and,~~

~~3. The monitoring and other emissions records.~~

~~(c) Permit requirements. The owner or operator shall comply with all provisions in a permit issued under 401 KAR 52:020 related~~

~~to use and approval of the PCP exclusion.~~

~~(d) Generation of emissions reduction credits.~~

~~1. Emissions reductions created by a PCP shall not be included in calculating a significant net emissions increase or for generating offsets, unless the emissions unit further reduces emissions after qualifying for the PCP exclusion.~~

~~2. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if such reductions are surplus, quantifiable, and permanent.~~

~~3. For generating offsets, the reductions shall also be federally enforceable.~~

~~4. For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~Section 14.~~] Plant-wide Applicability Limit Provisions. The cabinet may approve the use of an actuals PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.

(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:

1. Shall not be considered a major modification for the PAL pollutant;

2. Shall not have to be approved through Kentucky's major NSR program; and

3. Shall not be subject to the provisions of Section 7(4) of this administrative regulation concerning restrictions on relaxing enforceable emissions limitations that the major stationary source used to avoid applicability of the major NSR program.

(b) Except as provided under subparagraph (1)(a)3 of this section, the major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.

(c) The cabinet shall not allow a PAL for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.

(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:

(a) A list of all emissions units at the source designated as small, significant or major, based on their potential to emit;

(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;

(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation; and

(d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section.

(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.

(a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source, in which [~~where~~]:

1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall demonstrate [~~show~~] that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and

2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall demonstrate [~~show~~] that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL;

(b) The PAL shall be established in a PAL permit that:

1. Meets the public participation requirements in subsection (4) of this section; and

2. Contains all the requirements of subsection (6) of this section;

(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;

(d) Each PAL shall regulate emissions of only one (1) pollutant;

(e) Each PAL shall have a PAL effective period of ten (10) years;

(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period; and

(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:

1. The level of the PAL is reduced by the amount of the [~~such~~] emissions reductions; and

2. The reductions would be creditable in the absence of the PAL.

(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100 for issuing permits or permit revisions. The cabinet shall:

(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and

(b) Address all material comments before taking final action on a PAL permit or permit revision.

(5) Setting the ten (10) year PAL level.

(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section 1[~~(221)~~] or under 42 U.S.C. 7401-7671q[~~the Act~~], whichever is lower.

(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.

(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.

(d) Emissions associated with units that were permanently shut down after the chosen twenty-four (24) month period shall be subtracted from the PAL level.

(e) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.

(f) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.

(6) Contents of the PAL permit. The PAL permit shall contain the following information:

(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;

(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;

(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;

(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions;

(e) A requirement that, once the PAL expires, the major stationary source shall be[~~is~~] subject to the requirements of subsection (8) of this section;

(f) The calculation procedures that the major stationary source

owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;

(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;

(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format [~~or another acceptable format approved by the cabinet~~];

(i) A requirement for the owner or operator to submit, by the reports required under subsection (13) of this section by the required deadlines; and

(j) Any[~~Other~~] requirements necessary to implement and enforce the PAL.

(7) PAL effective period and reopening of a PAL permit.

(a) A PAL effective period shall be ten (10) years.

(b) The cabinet shall reopen a PAL permit to:

1. Correct typographical or calculation errors made in setting the PAL;

2. Reflect a more accurate determination of emissions used to establish the PAL;

3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.

(c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;

2. Reduce the PAL consistent with any other requirement:

a. That is enforceable as a practical matter; and

b. That may be imposed on the major stationary source under the SIP; and

3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:

a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.

(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply.

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established as follows:

1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL.

a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.

b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.

2. The cabinet shall provide[~~decide~~] the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.

3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.

(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS if the alternate monitoring system demonstrates[~~to demonstrate~~] compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 7(4) of this administrative regulation.

(9) Renewal of a PAL.

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward to a level not[~~no~~] greater than the potential to emit if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL without considering the factors specified in subparagraph 3 of this section, if the emissions level calculated according to subsection (5) of this section is equal to or greater than eighty (80) percent of the PAL level; or

3. The cabinet may set the PAL at a level that is determined to be:

a. More representative of the source's baseline actual emissions; or

b. Appropriate considering the following factors:

(i) Air quality needs;

(ii) Advances in control technology;

(iii) Anticipated economic growth in the area of the source;

(iv) The cabinet's goal of promoting voluntary emissions reductions; or[~~and~~]

(v) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted in conjunction with the [~~at the time of~~] PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for the[~~such~~] requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL emissions limitation during the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. To request an increase in the PAL limit for a PAL major modification, the owner or operator of the major stationary source shall submit a complete application, which shall include:

1. Identification of the emissions units contributing to the increase in emissions for the PAL major modification;

2. Demonstration that increased PAL, as calculated in paragraph (c) of this subsection exceeds the PAL, and:

a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis when[~~at the time~~] the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years.

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time;

2. A monitoring system authorized for use in the PAL permit shall be:

a. Approved by the cabinet pursuant to this subsection; and

b. Based on sound science and meet generally-acceptable scientific procedures for data quality and manipulation;

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit;

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection;

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coatings or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emissions factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant [~~that is~~] contained in or created by all materials used in or at the emissions unit;

2. If it cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable Performance Specifications found in 40 C.F.R. Part 60, Appendix A[~~B~~]; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(f) Emissions factors. An owner or operator using emissions factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

2. The emissions unit shall operate within the designated range of use for the emissions factor, if applicable; and

3. The[~~If technically practicable, the~~] owner or operator of a significant emissions unit that relies on an emissions factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emissions factor within six (6) months of PAL permit issuance if the cabinet determines that the testing is required and technically practicable[~~, unless the cabinet determines that testing is not required~~].

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during the[~~such~~] periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements in paragraphs (c) to (g) of this subsection, in conjunction with [~~at the time of~~] permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points if a correlation cannot be demonstrated; or

2. If there is not a [~~no~~] correlation between monitored parameters and the PAL pollutant emissions, determine that operation of the emissions unit during operating conditions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifi-

cally valid means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify the compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR Chapter 52 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;

2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section;

3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;

4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;

5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action following a deviation;

6. A notification of permanent or temporary shutdown of any monitoring system including:

a. The reason for the shutdown;

b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;

c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and

d. The calculation of the emissions of the pollutant or the number determined according to subsection (11)(g) of this section that is included in the permit; and

7. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210) [~~52:001~~], certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periods monitoring is unavailable.

1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(iii)(B) shall satisfy this deviation reporting requirement;

2. The deviation report shall be submitted within the time limits prescribed by the applicable program implementing 40 C.F.R. 70.6(a)(3)(iii)(B);

3. The deviation report shall contain the following information:

a. The identification of the owner, the operator, and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official, as defined by 401 KAR 51:001, Section 1(210) [~~52:001~~], certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published at 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before August 10, 2006 [~~the date the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published at 67 Fed. Reg. 80186, December 31, 2002~~], with a PAL that complies with the requirements of this administrative regulation [~~section~~].

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: November 13, 2009

FILED WITH LRC: November 13, 2009 at noon

CONTACT PERSON: Laura Lund, Environmental Technologist II, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3999, ext. 4428, fax (502) 564-4666, and email Laura_Lund@ky.gov.

JUSTICE & PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, December 14, 2009)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," **December 8**[~~August 25~~], 2009, are incorporated by reference. Department of Corrections Policies and Procedures include:

1.2 News Media (Amended **12/08/09**[~~8/25/09~~])[~~(Amended 5/15/08)~~]

1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)

2.1 Inmate Canteen (Amended 2/15/06)

2.2 Warden's Fund (Amended 10/14/05)

3.1 Code of Ethics (Amended 07/09/07)

3.3 Holding of Second Jobs by Corrections' Employees (Amended 5/15/08)

3.5 Sexual Harassment and Anti-Harassment (Amended 5/15/08)

3.10 Appearance and Dress for Nonuniformed Staff (Amended 8/25/09)[~~(Amended 11/9/04)~~]

3.11 Drug Free Workplace Employee Drug Testing (Amended 07/09/0

3.17 Uniformed Employee Dress Code (Amended 4/10/06)

3.20 Communication and Recording Devices (Amended 8/25/09)[~~(Amended 6/3/05)~~]

3.23 Internal Affairs Investigation (**Added**[~~Amended~~] 8/25/09),

4.4 Educational Assistance Program (Amended 8/25/09)

5.1 Research and Survey Projects (Amended 5/15/08)

6.1 Open Records Law (Amended 5/14/07)

8.2 Fire Safety (Amended 2/15/06)

8.7 Notification of Extraordinary Occurrence (Amended 12/13/05)

9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 11/9/04) [~~9.5 Execution (Amended 9/20/05)~~]

9.6 Contraband (Amended 12/13/05)

9.8 Search Policy (Amended 1/9/07)

9.13 Transport to Court - Civil Action (Amended 07/09/07)

9.18 Informants (Amended 10/14/05)

9.19 Found Lost or Abandoned Property (Amended 10/14/05)

9.20 Electronic Detection Equipment (Amended 10/14/05)

10.2 Special Management Inmates (Amended 8/25/09)[~~(Amended 5/15/08)~~]
10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
11.2 Nutritional Adequacy of Inmate Diet (Amended 5/15/08)
11.4 Alternative Dietary Patterns (Amended 5/15/08)
13.1 Pharmacy Policy and Formulary (Amended 8/25/09)[~~(Amended 11/15/06)~~]
13.2 Health Maintenance Services (Amended 8/25/09),[~~(Amended 1/9/07)~~]
13.3 Medical Alert System (Amended 10/14/05)
13.5 Advance Healthcare Directives (Added 4/12/05)
13.6 Sex Offender Treatment Program (Amended 5/15/08)
13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
13.8 Substance Abuse Program (Amended 5/15/08)
13.9 Dental Services (Amended 10/14/05)
13.10 Serious Infectious Disease (Amended 12/13/05)
13.11 Do Not Resuscitate Order (Amended 8/9/05)
13.12 Suicide Prevention and Intervention Program **(Added**[~~Amended~~] 8/25/09)
14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
14.2 Personal Hygiene Items (Amended 10/14/05)
14.3 Marriage of Inmates (Amended 10/14/05)
14.4 Legal Services Program (Amended 07/09/07)
14.5 Board of Claims (Amended 10/14/05)
14.6 Inmate Grievance Procedure (Amended 5/15/08)
14.7 Sexual Abuse Assault Prevention and Intervention Programs (Amended 11/15/06)
15.1 Hair, Grooming and ID Card Standards (Amended 5/15/08)
15.2 Rule Violations and Penalties (Amended 11/15/06)
15.3 Meritorious Good Time (Amended 12/13/05)
15.4 **Treatment** Program Time Credit (Amended **12/08/09**[~~8/25/09~~])
15.5 Restoration of Forfeited Good Time (Amended 5/14/07)
15.6 Adjustment Procedures and Programs (Amended 10/14/05)
15.7 Inmate Account Restriction (Amended 8/25/09)[~~(Amended 5/15/08)~~]
15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
16.1 Inmate Visits (Amended 8/25/09)[~~(Amended 5/15/08)~~]
16.2 Inmate Correspondence (Amended 5/15/08)
16.3 Inmate Access to Telephones (Amended 5/15/08)
16.4 Inmate Packages (Amended 07/09/07)
17.1 Inmate Personal Property (Amended 8/25/09)[~~(Amended 5/14/07)~~]
17.2 Assessment Center Operations (Amended 11/15/06)
17.3 Controlled Intake of Inmates (Amended 5/15/08)
17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
18.1 Classification of the Inmate (Amended 07/09/07)
18.2 Central Office Classification Committee (Amended 10/14/05)
18.5 Custody and Security Guidelines (Amended 5/15/08)
18.7 Transfers (Amended 07/09/07)
18.9 Out-of-state Transfers (Amended 2/15/06)
18.11 Placement for Mental Health Treatment in CPTU, KCIW-PCU, or KCPC (Amended 1/9/07)
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
18.13 Population Categories (Amended 07/09/07)
18.15 Protective Custody (Amended 11/15/06)
18.16 Information to the Parole Board (Effective 11/15/06)
18.17 Interstate Agreement on Detainers (Amended 07/09/07)
18.18 International Transfer of Inmates (Amended 5/14/07)
19.1 Governmental Services Program (Amended 07/09/07)
19.2 Sentence Credit for Work (Added 2/13/04)
19.3 Inmate Wage/Time Credit Program (Amended **12/08/09**[~~10/14/05~~])
20.1 Educational Programs and Educational Good Time (Amended 8/25/09)[~~(Amended 5/15/08)~~]
22.1 Privilege Trips (Amended 10/14/05)
23.1 Religious Programs (Amended 5/15/08)
25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
25.3 Prerelease Program (Effective 11/15/06)
25.4 Institutional Inmate Furloughs (Amended 07/09/07)
25.6 Community Center Program (Amended 07/09/07)
25.8 Extended Furlough (Amended 4/12/05)
25.10 Administrative Release of Inmates (Amended 8/25/09)[~~(Amended 10/14/05)~~]
25.11 Victim **Services** Notification (Amended 8/25/09) [~~(Amended 10/14/05)~~]
26.1 Citizen Involvement and Volunteer Service Program (Added 9/15/04)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner
APPROVED BY AGENCY: August 27, 2009
FILED WITH LRC: September 11, 2009 at 11 a.m.
CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

TRANSPORTATION CABINET
Department of Vehicle Regulations
Division of Motor Vehicle Licensing
(As Amended at ARRS, December 14, 2009)

601 KAR 23:010. Classic motor vehicle project.

RELATES TO: KRS 186.020, 186A.115, **186A.120,** 186A.170(1)(b), 186A.510, 186A.535**, 190.300, 190.990(5), 49 U.S.C. 32705**
STATUTORY AUTHORITY: KRS 186A.535
NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.535 authorizes the cabinet to promulgate administrative regulations governing the application process and titling of classic motor vehicle projects and restored classic motor vehicle projects. This administrative regulation establishes the procedures necessary to obtain a certificate of title for a classic motor vehicle project as defined **by**[~~in~~] KRS 186A.510(2) and for a classic motor vehicle project that has been restored to roadworthy condition.

Section 1. Application for Certificate of Title of a Classic Motor Vehicle Project. (1)**(a)** "Salvage", "junk vehicle" and "rebuilt vehicle" as defined **by**[~~in~~] KRS 186A.510 **shall be**[~~are~~] considered permanent brands.

(b) The term "classic motor vehicle project" **shall be**[~~is~~] considered a temporary brand in the process of obtaining title.

(2) The owner of a motor vehicle that meets the definition of "classic motor vehicle project" as defined by KRS 186A.510(2) shall apply for a certificate of title as follows:

(a) The applicant shall complete an Application for **Kentucky Certificate of Title or**[~~Title and~~] Registration, Form TC 96-182.

(b) A certified inspector who meets the requirements of 601 KAR 9:085 shall verify the Vehicle Identification Number [~~"~~]VIN[~~"~~] of the motor vehicle, and complete the appropriate section of the Application for **Kentucky Certificate of Title or**[~~Title and~~] Registration, Form TC 96-182.

(c) The applicant shall submit the completed form to the county clerk of residence accompanied by the supporting documents as required in KRS 186.020.

(d) A classic motor vehicle project shall not be processed through "speed title" as established in KRS 186A.170(1)(b).

Section 2. Application for Certificate of Title of a Restored Classic Motor Vehicle Project. (1) The owner of a classic motor vehicle project restored to roadworthy condition shall apply for a certificate of title as follows:

(a) The applicant shall **submit a notarized Kentucky Certifi-**

cate of Title or[~~complete an Application for Title and~~] Registration, Form TC 96-182.

(b) A certified inspector who meets the requirements of 601 KAR 9:085 shall physically inspect the classic motor vehicle project and certify that it is roadworthy pursuant to KRS 186A.510(8).

(c) The applicant shall submit the completed form and supporting documents to the county clerk of residence.

(d) The clerk shall issue an original certificate of title without a special brand.

(e) A restored, roadworthy classic motor vehicle project may be processed through "speed title".

Section 3. Incorporation by Reference. (1) Form TC 96-182, "Application for Kentucky Certificate of Title **or Registration", December**[~~and Registration", August~~] 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Vehicle Regulations, Division of Motor Vehicle Licensing, Second Floor, Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

GERI GRIGSBY, Acting Commissioner
MIKE HANCOCK, Acting Secretary
APPROVED BY AGENCY: October 12, 2009
FILED WITH LRC: October 14, 2009 at 11 a.m.
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) 564-5238.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(As Amended at ARRS, December 14, 2009)

815 KAR 7:070. The Kentucky Certified Building Inspector Program.

RELATES TO: KRS 198B.040(3), 198B.050(3)(c), (6), **198B.060,** 198B.090, 198B.095, EO 2009-535

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.090(1)(a), **198B.095(1),** EO 2009-535 [~~2008-507~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.090(1)(a) requires the office to create and administer a building inspector's certification program which is designed to ensure uniform statewide enforcement of applicable state building codes. **KRS 198B.050(5) requires the board to promulgate administrative regulations necessary to implement the Uniform State Building Code. KRS 198B.095(1) authorizes the board to promulgate an administrative regulation to establish a building inspector training program.** EO 2009-535, effective June 12, 2009, [~~2008-507, effective June 16, 2008,~~] reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the testing, training, and continuing education requirements for qualifying persons to become inspectors for the enforcement of the Kentucky Building Code, and to identify the level of their responsibilities for this enforcement.

Section 1. Definitions. (1) "Certified building inspector" is defined by KRS 198B.010(6).

(2) "Enrolled" means an applicant has complied with the requirements established in Section 4(1) of this administrative regulation.

(3) "**ICC test module" means a test module, from the International Code Council, that is used to meet the module testing requirements established in Section 5 of this administrative regulation.**

(4) "Limited certificate" means a document establishing that a person:

(a) Has passed the test for competency in one (1) or more NCPCCI or ICC test modules; and

(b) Is qualified to engage in the type of limited inspections listed on the certificate which represents the level of competency for which the person was tested. [~~(4) "ICC test module" means a test module, from the International Code Council, which meets the module testing requirements established in Section 5 of this administrative regulation.~~]

(5) "NCPCCI test module" means a test module, from the National Certification Program for Construction Code Inspectors, developed by the national code enforcement organizations for the purpose of providing nationally-recognized evidence of competency and professionalism in construction code enforcement and used to meet the module testing requirements established in Section 5 of this administrative regulation.

(6)[~~(5)~~] "Trainee" means a person who is enrolled in the building inspector program of the department, but has not completed the NCPCCI or ICC test modules necessary to be a Kentucky certified building inspector.

Section 2. Inspection Operations. (1) Each governmental entity engaged in a building inspection program shall have, in responsible charge of all construction document approvals, inspections and issuance of certificates of occupancy, at least one (1) Kentucky certified building inspector with the level of credentials required for the buildings covered by the program.

(2) A trainee may be utilized in a building inspection program if the trainee operates under the general supervision of a Kentucky certified building inspector.

(a) Trainees shall not issue permits, construction document approval letters, inspection compliance letters, or certificates of occupancy.

(b) A trainee holding a current limited certificate shall exercise only the duties authorized by that certificate.

(c) A limited certificate shall not be available to persons who apply after March 22, 2001.

Section 3. Training and Testing Requirements to Become Certified. A candidate seeking certification shall comply with the provisions of this section.

(1) A candidate seeking to become certified pursuant to this administrative regulation and all trainees shall be required to attend orientation training, provided or approved by the department. The training sessions shall be given quarterly.

(2) Continuing education.

(a) Continuing education programs shall be conducted by:

1. The department;

2. The Code Administrators Association of Kentucky; or

3. A provider that is approved by the department pursuant to paragraph (d) of this subsection.

(b) The board may fund a continuing education program through the Building Inspectors' Financial Incentive Training Program Fund.

(c) A candidate seeking certification shall:

1. **Complete a minimum of twelve (12) hours of continuing education training annually; and**

2. Submit verification of completion [~~Provide verification~~] on either:

a. Form DHBC[~~OHBC~~] BC/CE-1; or

b. A certificate of completion provided by a pre-approved training provider[~~; and~~

~~2. Complete a minimum of twelve (12) hours of training annually~~].

(d)1. A provider shall submit a **written** request for approval of the educational program to the department no **less** [~~later~~] than thirty (30) days prior to the date the educational program will be offered.

2. The program shall be recognized as approved training for the Kentucky Certified Building Inspector Program if the program:

a. [~~Appropriately~~] Relates to the general business skills or the technical skills required of a certified inspector;

b. Contains sufficient educational content to improve the quality of a certified inspector's performance; **and**

c. [~~Is taught by qualified instructors; and~~

~~d.~~] Includes a course evaluation.

3. The written request shall include the following:

a. The total number of continuing education hours;

b. Course syllabus;

c. A detailed outline of the contents of the course;

d. Name and address of **the** vendor;

e. Name, address, and qualifications of **the** instructor;

f. Program agenda with written description of class material which clearly identifies that the educational content relates to the general business skills or the technical skills required of a certified inspector which would improve the quality of the certified inspector's performance; and

g. Location and keeper of class attendance verification list, which shall be available for at least twelve (12) months after completion of the educational program.

(3) The commissioner[~~, in his discretion,~~] may waive the time requirements **established** in this administrative regulation for hardships shown or if circumstances warrant a waiver due to changes in testing procedures, standards or dates [~~or other reasons which would render strict application unfair~~].

Section 4. Application for Training and Certification. (1) To become a trainee or a candidate for certification, a person shall submit:

(a) A completed form DHBC[~~OHBC~~] BC/CP-1, Initial Application Form;

(b) A fifty (50) dollar application fee; and

(c) Written proof that the applicant has met the requirements established in subsection (2) of this section.

(2) An applicant shall have:

(a)1. Graduated from high school or earned a general education diploma; and

2.a. Three (3) years experience in a responsible, directly-related construction position, such as a foreman, which required the ability to effectively read and interpret building plans and specifications; or

b. Three (3) years experience in an architect's or engineer's office performing building design or drafting duties;

(b) Graduated from a college or university with an associate degree in a design, building technology or construction-related subject; or

(c) Graduated from a college or university with a bachelor's degree in architecture, engineering, fire science, or building technology.

(3) A certified inspector or trainee, including an inspector holding a limited certificate, shall [~~to~~] pay an annual renewal fee of fifty (50) dollars not later than the last day of the certified inspector or trainee's birth month in order to maintain certification and to continue to be registered. If a certified inspector or trainee fails to renew ninety (90) days after the last day of **that person's** [~~their~~] birth month, an additional fifty (50) dollar fee shall be accrued.

(4) A person shall not engage in any inspection activities for the enforcement of the Kentucky Building Code, or the One- and Two-Family Dwelling Code as adopted within the Kentucky Building Code for application to one (1) and two (2) family dwellings and townhouses, unless that person is currently enrolled with the department and has otherwise complied with the requirements of this administrative regulation.

Section 5. Certification Requirements, Responsibilities and Jurisdiction for Inspectors. (1) One (1) and two (2) family dwelling inspector.

(a) A person shall be classified as a one (1) and two (2) family dwelling inspector if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code, by passing the following [~~NCPCCI or ICC test modules~~]:

a. NCPCCI test **modules:**

(i) Test 1A Building One- and Two-Family Dwelling; **and**

(ii) [~~and~~][~~b. NCPCCI~~] Test 4A Mechanical One- and Two-Family Dwelling; **or**

b. ICC test modules:

(i)[~~c. ICC~~] Test B1 Residential Building Inspector; and

(ii)[~~d. ICC~~] Test M1 Residential Mechanical Inspector**; and**[~~.~~]

2. [~~Completed the orientation training required by Section 3(1) of this administrative regulation; and~~

~~3.~~] Complied with the requirements of this administrative regulation.

(b) A one (1) and two (2) family dwelling inspector shall be qualified to perform all functions related to the enforcement of the One- and Two-Family Dwelling Code, including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy for the construction of one (1) and two (2) family dwellings and townhouses.

(2) Building inspector, level I.

(a) A person shall be classified as a building inspector, level I, if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code and the Kentucky Building Code, by passing the following**:**

a. NCPCCI [~~or ICC~~] test modules:

(i)[~~a. NCPCCI~~] Test 1A Building One- and Two-Family Dwelling;

(ii)[~~b. NCPCCI~~] Test 4A Mechanical One- and Two-Family Dwelling;

(iii)[~~c. NCPCCI~~] Test 1B Building General; [~~and~~]

(iv)[~~d. NCPCCI~~] Test 3B Fire Protection General; **and**

b. ICC test modules:

(i) [~~e. ICC~~] Test B1 Residential Building Inspector;

(ii)[~~f. ICC~~] Test B2 Commercial Building Inspector;

(iii)[~~and~~

~~g. ICC~~] Test MI Residential Mechanical Inspector**; and**

2. [~~Completed the orientation training required by Section 3(1) of this administrative regulation; and~~

~~3.~~] Complied with the requirements of this administrative regulation.

(b) A building inspector, level I, shall be qualified to perform all functions related to the enforcement of the Kentucky Building Code, including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy for all buildings of the occupancy type and size assigned to local governments by KRS 198B.060(2).

(3) Building inspector, level II.

(a) A person shall be classified as a building inspector, level II, if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code and the Kentucky Building Code, by passing the following**:**

a. NCPCCI test modules:

(i) Test 1A Building One- and Two-Family Dwelling;

(ii) Test 4A Mechanical One- and Two-Family Dwelling;

(iii) Test 1B Building General;

(iv) Test 3B Fire Protection General; and

(v) Test 4B Mechanical General; or

b. ICC test modules:

(i) Test B1 Residential Building Inspector;

(ii) Test B2 Commercial Building Inspector;

(iii) Test M1 Residential Mechanical Inspector; and

(iv) Test M2 Commercial Mechanical Inspector; and

[~~NCPCCI or ICC test modules:~~

~~a. NCPCCI Test 1A Building One- and Two-Family Dwelling;~~

~~b. NCPCCI Test 4A Mechanical One- and Two-Family Dwelling;~~

~~c. NCPCCI Test 1B Building General;~~

~~d. NCPCCI Test 3B Fire Protection General;~~ [~~and~~]

~~e. NCPCCI Test 4B Mechanical General;~~

~~f. ICC Test B1 Residential Building Inspector;~~

~~g. ICC Test B2 Commercial Building Inspector;~~

~~h. ICC Test M1 Residential Mechanical Inspector; and~~

~~i. ICC Test M2 Commercial Mechanical Inspector.~~]

2. [~~Completed the orientation training required by Section 3(1) of this administrative regulation; and~~

~~3.~~] Complied with the requirements of this administrative regulation.

(b) A building inspector, level II, shall be qualified to perform functions related to the enforcement of the Kentucky Building Code

for all buildings of the occupancy type and size assigned to local government under KRS 198B.060(2) including issuing permits, reviewing and approving construction documents, conducting on-site inspections, and issuing compliance letters and certificates of occupancy.

(c) A building inspector, level II, shall be qualified to conduct on-site inspections of all buildings which were assigned to the department pursuant to KRS 198B.060(4).

(4) Building inspector, level III.

(a) A person shall be classified as a building inspector, level III, if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code, Mechanical Code and the Kentucky Building Code, by passing the following:

a. NCPCCI test modules:

(i) Test 1A Building One- and Two-Family Dwelling;

(ii) Test 4A Mechanical One- and Two-Family Dwelling;

(iii) Test 1B Building General;

(iv) Test 3B Fire Protection General;

(v) Test 4B Mechanical General;

(vi) Test 1C Building Plan Review;

(vii) Test 3C Fire Protection Plan Review; and

(viii) Test 4C Mechanical Plan Review; or

b. ICC test modules:

(i) Test B1 Residential Building Inspector;

(ii) Test B2 Commercial Building Inspector;

(iii) Test M1 Residential Mechanical Inspector; and

(iv) Test M3 Mechanical Plans Examiner; and [~~NCPCCI or ICC test modules:~~

~~a. NCPCCI Test 1A Building One- and Two-Family Dwelling;~~

~~b. NCPCCI Test 4A Mechanical One- and Two-Family Dwelling;~~

~~c. NCPCCI Test 1B Building General;~~

~~d. NCPCCI Test 3B Fire Protection General;~~

~~e. NCPCCI Test 4B Mechanical General;~~

~~f. NCPCCI Test 1C Building Plan Review;~~

~~g. NCPCCI Test 3C Fire Protection Plan Review;~~ [~~and~~]

~~h. NCPCCI Test 4C Mechanical Plan Review;~~

~~i. ICC Test B1 Residential Building Inspector;~~

~~j. ICC B3 Building Plans Examiner;~~

~~k. ICC M1 Residential Mechanical Inspector; and~~

~~l. ICC M3 Mechanical Plans Examiner.~~]

2. [~~Completed the orientation training required by Section 3(1) of this administrative regulation; and~~

~~3.~~] Complied with the requirements of this administrative regulation.

(b) A building inspector, level III, shall be qualified to perform all functions relating to the enforcement of the Kentucky Building Code, including issuing permits, reviewing and approving construction documents conducting, on-site inspections and issuing compliance letters and certificates of occupancy for all buildings, regardless of size or occupancy type. A local inspector shall not be authorized to perform these functions on buildings assigned to the department by KRS 198B.060(4), except by petition to and approval of more inspection responsibility by the department pursuant to 815 KAR 7:110.

(5) Mechanical inspector, one (1) and two (2) family dwellings.

(a) A person shall be classified as a mechanical inspector of one (1) and two (2) family dwellings if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code by passing the:

a. NCPCCI Test 4A Mechanical One- and Two-Family Dwelling test module; or

b. ICC Test M1 Residential Mechanical Inspector test module; and [~~NCPCCI or ICC test module, NCPCCI Test 4A Mechanical One- and Two-Family Dwelling and ICC test module, M1 Residential Mechanical Inspector;~~]

2. [~~Completed the orientation training required by Section 3(1) of this administrative regulation; and~~

~~3.~~] Complied with the requirements of this administrative regulation.

(b) A mechanical inspector of one (1) and two (2) family dwellings shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the One- and Two-Family Dwelling Code including conducting inspections of one (1) and two (2) family dwelling mechanical installations for compliance.

(6) Mechanical inspector general (other than one (1) and two (2) family dwellings).

(a) A person shall be classified as a mechanical inspector general if the person has:

1. Been tested for competency under the Mechanical Code, by passing:

a. NCPCCI Test 4B Mechanical General test module; or

b. ICC Test M2 Commercial Mechanical Inspector test module; and [~~the NCPCCI or ICC test module, Test 4B Mechanical General and ICC test module M2 Commercial Mechanical Inspector;~~]

2. [~~Completed the orientation training required by Section 3(1) of this administrative regulation; and~~

~~3.~~] Complied with the requirements of this administrative regulation.

(b) A mechanical inspector general shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(7) Mechanical inspector and plan reviewer.

(a) A person shall be classified as a mechanical inspector and plan reviewer if the person has:

1. Been tested for competency under the One- and Two-Family Dwelling Code and the Mechanical Code, by passing the following:

a. NCPCCI test modules:

(i) Test 4A Mechanical One- and Two-Family Dwelling;

(ii) Test 4B Mechanical General; and

(iii) Test 4C Mechanical Plan Review; or

b. ICC test modules:

(i) Test M1 Residential Mechanical Inspector; and

(ii) Test M3 Mechanical Plans Examiner; and [~~NCPCCI or ICC test modules:~~

~~a. NCPCCI Test 4A Mechanical One- and Two-Family Dwelling;~~

~~b. NCPCCI Test 4B Mechanical General;~~ [~~and~~]

~~c. NCPCCI Test 4C Mechanical Plan Review;~~

~~d. ICC M1 Residential Mechanical Inspector; and~~

~~e. ICC M3 Mechanical Plans Examiner.~~]

2. [~~Completed the orientation training required by Section 3(1) of this administrative regulation; and~~

~~3.~~] Complied with the requirements of this administrative regulation.

(b) A mechanical inspector and plan reviewer shall be qualified to perform all functions related to the enforcement of the mechanical requirements of the One- and Two-Family Dwelling Code and the Mechanical Code including management of mechanical code enforcement activity, supervision of mechanical inspectors or plans examination, performing plans examination for compliance and conducting inspections of structures for compliance.

(8) Trainees and limited certificates.

(a) A person making inspections pursuant to a limited certificate shall be supervised by a Kentucky certified building inspector[~~,~~] with a level I certification or higher.

(b) A person making inspections as a trainee without a certificate shall be supervised by a person with a level of certification equal to or higher than that which the trainee is pursuing.

(c) A trainee or a person with a limited certificate shall not issue permits, construction document approval letters, compliance letters or certificates of occupancy, or make any official or final determinations relating to the Kentucky Building Code.

(9) A person making inspections as authorized by this administrative regulation shall not overrule, supplant or order any corrections or alterations which conflict with the approved construction documents. If an inspector believes that the construction documents are wrong or that the construction is in violation of the code, the inspector shall immediately refer the matter to the certified building inspector responsible for approval of the construction documents for resolution.

(10) Upon application by a testing agency, a national code

group, or by an applicant for certification, the department may recognize other examinations as equivalent to the listed NCPCCI or ICC examinations. The person or group submitting the examination shall demonstrate that the examinations cover the same codes and require the same level of knowledge as the NCPCCI or ICC examinations.

Section 6. Suspension and Revocation of Certification. (1) Formal written complaints concerning an inspector shall be submitted to the Department of Housing, Buildings, and Construction for review and appropriate action.

(2) Action shall not be taken against a building inspector governed under this administrative regulation until a hearing has been held in accordance with KRS Chapter 13B and the commissioner determines that the inspector is:

(a) Not enforcing the Kentucky Building Code;

(b)[,] Improperly enforcing the code; or

(c) Violating his **or her** responsibilities as an inspector[~~, as required by law~~].

Section 7. Grandfather Clause. (1) A person who was certified as a building inspector, level I, II or III, or who held a limited certificate on December 15, 1997 shall:

(a) Not be required to take additional test modules to renew the certification, if the person has maintained continuous certification since December 15, 1997; and

(b) Complete the continuing education requirements as established in Section 3 of this administrative regulation prior to renewal of the certificate.

(2) A person who was certified on March 22, 2001, but who seeks to achieve a higher level of certification, shall comply with the testing modules required by this administrative regulation.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form DHBC[~~OHBC~~]-BC/CE 1, Continuing Education Verification Form, October 2009 [~~March 2005~~]; and

(b) Form DHBC[~~OHBC~~]-BC/CP 1, Initial Application Form, October 2009 [~~March 2005~~].

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

RICHARD MOLONEY, Chair
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 13, 2009

FILED WITH LRC: October 14, 2009 at 4 p.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Medical Management
(As Amended at ARRS, December 14, 2009)

907 KAR 1:715. School-based health services.

RELATES TO: KRS 156.070, 205.520, 605.115, 314.470, 20 U.S.C. 33, 34 C.F.R. 300.320, 300.321, 300.324[~~20 U.S.C. 33~~]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medicaid services to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to school-based health services (SBHS) for which payment shall be made by the Medicaid Program on behalf of Medicaid recipients who are eligible for school-based health services under 20 U.S.C. Chapter 33 [~~the Individuals with Disabilities Education Act (20 U.S.C. 33)~~].

Section 1. Definitions. (1) "Admissions and release committee" or "ARC" means a group of individuals which meets the:

(a) ARC requirements established in 707 KAR 1:320; and

(b) IEP team requirements established in 34 C.F.R. 300.321.

(2) "Advanced registered nurse practitioner" is defined by KRS 314.011(7).

(3) [~~required by 707 KAR 1:320 and 34 C.F.R. 300.344, who are responsible for developing, reviewing, and, as necessary, revising the individualized education program for a child with a disability.~~

~~(2)~~] "Assistive technology device" means an item, piece of equipment, or product system that is:

(a) Used to increase, maintain, or improve the functional capabilities of a child with a disability; and

(b) Medically necessary to implement the health services in the child's individualized education program.

(4) "Certified psychologist" means an individual who holds the title of certified psychologist pursuant to KRS 319.056.

(5) "Certified psychologist with autonomous functioning" means an individual who holds the title of certified psychologist with autonomous functioning pursuant to KRS 319.056.

(6) "Certified social worker" means an individual with a certified social worker license pursuant to KRS 335.080.

(7) [~~(3) "Collateral services" means instruction and consultation to a child, the child's family, teacher, or another service provider which is necessary to communicate and enhance the effectiveness of the child's treatment and management programs.~~

~~(4)~~] "Department of Education" means the Commonwealth of Kentucky, Department of Education.

(8)[~~(5)~~] "IDEA" means the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33.

(9) "IEP team" is defined by 34 C.F.R. 300.321.

(10)[~~(6)~~] "Incidental interpreter services" means **the**[~~those~~] interpreter services that are necessary to allow the child to benefit from other covered school-based health services.

(11)[~~(7)~~] "Individualized Education Program" or "IEP" is defined by 34 C.F.R. 300.320.

(12) "Licensed clinical social worker" means an individual possessing a current licensed clinical social worker license pursuant to KRS 335.100.

(13) "Licensed practical nurse" is defined by KRS 314.011(9).

(14) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(15) "Licensed professional clinical counselor associate" is defined by KRS 335.500(4).

(16) "Licensed psychological associate" means an individual holding the title of licensed psychological associate pursuant to KRS 319.064.

(17) "Licensed psychological practitioner" means an individual who meets the licensed psychological practitioner requirements established in KRS 319.053.

(18) "Licensed psychologist" means a psychologist who holds a licensed psychologist license pursuant to KRS 319.010(5).

(19) "Licensed social worker" means an individual possessing a current licensed social worker license pursuant to KRS 335.090.

(20) "Occupational therapist" is defined by KRS 319A.030(3).

(21) "Occupational therapy assistant" is defined by KRS 319A.030(4).

(22) "Physical therapist" is defined by KRS 327.010(2).

(23) "Physical **therapist** [~~therapy~~] assistant" means an individual:

(a) With a current **credential** [~~license~~] from the Kentucky Board of Physical Therapy; and

(b) Working under the supervision of a physical therapist.

(24) "Psychologist" is defined by KRS 319.010(8).

(25) "Recipient" is defined by KRS 205.8451(9).

(26) "Registered nurse" is defined by KRS 314.011(5).

(27) "Respiratory care practitioner" is defined by KRS 314A.010(3).

(28) **"SBHS" or**[~~means a written plan for a child with a disabili-~~

~~ty that is developed, reviewed and revised in accordance with 707 KAR 1:320.~~

~~(8) "Recipient" means a Medicaid-eligible child under the age of twenty-one (21), including the entire month in which the child becomes twenty-one (21).~~

~~(9)~~] "School-based health services" or [~~"SBHS"~~] means medically-necessary health services;

(a) Provided for in 907 KAR 1:034; and

(b)[~~as~~] Specified in an individualized education program for a child determined to be eligible under the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33, and 707 KAR Chapter 1.

(29) "SBHS recipient" means a recipient who:

(a) Is under the age of twenty-one (21) years; and

(b) Receives school-based health services.

(30)[~~(10)~~] "Special transportation" means a special arrangement, special equipment, or a special vehicle [~~which is~~]:

(a) **Which is** appropriate for the child's disability; and

(b) The need for which is described in the child's individualized education plan.

Section 2. Provider Requirements. (1) A school district that requests to participate as a school-based health care provider shall not be qualified to provide school-based health services:

(a) Until it has enrolled as a Medicaid provider pursuant to 907 KAR 1:672;

(b) Until it has been certified by the Department of Education to provide school-based health services; and

(c) Unless it is currently compliant with the Medicaid provider participation requirements established in 907 KAR 1:671 [~~be certified by the Department of Education~~].

(2) The Department of Education shall grant certification to a district that agrees to:

(a) Provide services as:

1. Required by 20 U.S.C. Chapter 33;[,] and

2. Specified in an approved individualized education program developed by an ARC that includes a multidisciplinary team of professionals acting within their scope of practice;

(b) Comply with the service provision requirements mandated by 20 U.S.C. Chapter 33 and in accordance with [~~requirements for provision of services required by IDEA as outlined in~~] 707 KAR 1:320;

(c) Employ or contract with health care professionals who meet the qualifications specified in Section 4 of this administrative regulation;

(d) Provide the Department of Education with a proposed quality assurance outline;

(e) Maintain and submit to the Department of Education all required records and reports to ensure compliance with 20 U.S.C. Chapter 33; and

(f) Provide the Department of Education with a list of school-based health services that the school district provides. This list shall contain the following information for employees and contractors providing the services:

1. Name;

2. Credentials;

3. Hourly salary;

4. Hourly fringe benefit costs; and

5. Hourly contract amounts.

(3) The Department for Medicaid Services shall grant Medicaid enrollment to a provider who:

(a) Meets the criteria established in subsections (1) and (2) of this section;

(b) Works within his or her scope of practice as established in Kentucky law; and

(c) [~~in subsection (2) of this section; and~~

~~(b)~~] Is recommended by the Department of Education for certification and enrollment in the Kentucky Medicaid Program as a provider of school-based health services.

(4) A Medicaid school-based health services provider shall:

(a) Submit to an annual review by the Department of Education to ensure
compliance with the standards for continued participation as a Medicaid provider;

(b) Have an on-site survey completed by the Department of Education as necessary to determine compliance with the Medicaid Program;

(c) Take action as specified by the Department of Education to correct a deficiency if found to be in noncompliance with the provision of services outlined in 707 KAR 1:320 or this administrative regulation;

(d) Agree to implement a quality assurance program approved by the Department of Education for the provision of Medicaid-covered services within one (1) year from the date the Department of Education recommends enrollment to the Medicaid Program;

(e) Maintain a current list of school-based health services that the school district provides. The list shall contain the information listed in subsection (2)(f) of this section for an employee or contractor providing the services; [~~and~~]

(f) Maintain records on each SBHS [~~Medicaid-eligible~~] recipient who receives services reimbursed by Medicaid. The[~~These~~] records shall:

1. Identify the child, services performed, and quantity or units of service;

2. Be signed and dated by the professional who provided or supervised the service;

3. Be legible with statements written in an objective manner;

4. Indicate progress being made, any change in treatment, and response to the treatment; and

5. Be retained [~~maintained~~] for a minimum of five (5) years plus any additional time required by law; and

(g) Comply with 907 KAR 1:671 and 1:672.

Section 3. Covered Services. (1) A school-based health service that is included in an [~~authorized~~] IEP authorized by an IEP team or ARC and provided in accordance with this administrative regulation shall:

(a) Be considered medically necessary; and

(b) [~~shall~~] Not be subject to additional Medicaid prior-authorization requirements.

(2) The following services shall be covered if provided to address a medical or mental disability and to assist an [~~the~~] individual in benefiting from special education programming which is included, authorized, and provided in accordance with the individualized education program:

(a) Nursing;

(b) Audiology;

(c) Speech and language;

(d) Occupational therapy;

(e) Physical therapy;

(f) Mental health;

(g) Incidental interpreter services provided in conjunction with another covered service;

(h) Orientation and mobility services;

(i) Respiratory therapy;

(j) Assistive technology devices and appropriate related evaluations if the devices purchased by the Medicaid Program become the property of the SBHS recipient; and

(k) Special transportation with the following limitations:

1. A special transportation service shall be limited to transporting an SBHS [a] recipient to receive a Medicaid-covered service at:

a. A site other than the school building in which the child is enrolled for general education purposes;

b. The child's home if the child is a home-bound student and receives general education services at home; or

c. The school building where the child receives the Medicaid-covered service. Special transportation to the school building from the child's home or other site and return special transportation from the school building to the child's home or other site shall be covered for the day the Medicaid-covered service is provided at the school building;

2. A special transportation service shall be provided using a type of vehicle which:

a. Meets the specifications established by KRS 156.153, 702 KAR 5:060, and 702 KAR 5:130; and

b. Is appropriate for the child's disability as determined by the ARC in accordance with 702 KAR 5:100; and

3. A special transportation service provided by a member of an

SBHS recipient's household to the SBHS recipient shall not be covered unless the SBHS recipient's household member is [~~shall not be covered for special transportation Provided by a member of the recipient's household if that person is not~~] an employee of the school district.

(3) A covered school-based health service:

(a) Shall not be limited by site of service;

(b) Shall be provided in:

1. A group of no more than six (6); or

2. In a one-on-one situation; and

(c) May include:

1. An assessment or evaluation if the assessment or evaluation is stated in the SBHS recipient's IEP, except as allowed in subsection (4) of this section; or

2. A treatment component if the treatment component is stated in the SBHS recipient's IEP [~~assessment, evaluation, treatment, and collateral components~~].

(4) An assessment or evaluation conducted prior to the establishment of an individualized education program shall be covered if the individualized education program is subsequently developed and implemented as a result of the assessment or evaluation.

Section 4. Staffing Requirements. School-based health services shall be reimbursable if provided by a professional acting within his or her scope of practice as defined by state law and as provided in this section.

(1) A nursing service shall be provided by:

(a) An advanced registered nurse practitioner with a current license from the Kentucky Board of Nursing;

(b) A registered nurse:

1. With a current license from the Kentucky Board of Nursing; or

2. Authorized to provide a nursing service;

(c) A licensed practical nurse:

1. With a current license issued by the Kentucky Board of Nursing, under appropriate supervision and delegated authority; or

2. Authorized to provide a nursing service pursuant to KRS 314.470; or

(d) A health aide if:

1. The aide is under the supervision of a specific registered nurse or advanced registered nurse practitioner;

2. The supervising registered nurse or advanced registered nurse practitioner has trained the aide for the specific SBHS nursing service for the specific recipient; and

3. The supervising registered nurse or advanced registered nurse practitioner has verified in writing that the aide has appropriate training and skills to perform the specific service in a safe, effective manner.

(2) Audiology services shall be provided by an audiologist with a current license from the Kentucky Board of Speech-Language Pathology and Audiology.

(3) Speech and language services shall be provided by:

(a) A speech-language pathologist who [~~with~~]:

1. Has a current license from the Kentucky Board of Speech-Language Pathology and Audiology; [~~or~~]

2. Has a master's level [~~profession~~] professional [~~a masters-level~~] certification issued by the Kentucky Education Professional Standards Board after January 1, 2001; or

3. Has a certificate of clinical competence issued by the American Speech-Language-Hearing Association; or

4. Is working under the supervision of an individual who:

a. Has a current license from the Kentucky Board of Speech-Language Pathology and Audiology;

b. Has a master's level professional certification issued by the Kentucky Education Professional Standards Board after January 1, 2001; or

c. Has a certificate of clinical competence issued by the American Speech-Language-Hearing Association; or

(b) A speech-language pathology assistant who:

1. Has:

a. A current license from the Kentucky Board of Speech-Language Pathology and Audiology; or

b. A baccalaureate-level certification issued by the Kentucky Educational Professional Standards Board; and

2. Is under the supervision of a licensed or certified masters-level speech-language pathologist in accordance with KRS 334A.033, 334A.080 and 161.053.

(4) Occupational therapy services shall be provided by:

(a) An occupational therapist:

(b) An occupational therapy assistant; [~~with a current license from the Kentucky Board of Licensure for Occupational Therapy;~~

~~(b) An occupational therapy assistant who is:~~

~~1. Licensed by the Kentucky Board of Licensure for Occupational Therapy to assist in the practice of occupational therapy; and~~

~~2. Under the supervision of an occupational therapist;~~] or

(c) An unlicensed occupational therapy aide who:

1. Provides supportive services to occupational therapists and occupational therapy assistants; and

2. Is under the direct supervision of a licensed occupational therapist.

(5) Physical therapy services shall be provided by:

(a) A physical therapist [~~with a current license from the State Board of Physical Therapy~~];

(b) A physical therapist assistant [~~with a current license from the State Board of Physical Therapy under the supervision of a licensed physical therapist~~];

(c) An individual with a temporary permit to perform physical therapy in Kentucky pursuant to 327.010(5) [~~A physical therapist with a temporary permit issued by the State Board of Physical Therapy under the supervision of a licensed physical therapist~~];

(d) A student of physical therapy under the supervision of a [~~licensed~~] physical therapist; or

(e) Physical therapy supportive personnel [~~A physical therapy aide~~] under the direct on-site supervision of a:

1. [~~Licensed~~] Physical therapist; or

2. [~~Licensed~~] Physical therapist assistant in accordance with the provisions of 201 KAR 22:053.

(6) A mental health service shall be provided by:

(a) A licensed psychologist;

(b) A licensed psychological practitioner;

(c) A certified psychologist with autonomous functioning;

(d) A certified psychologist;

(e) A licensed psychological associate;

(f) A licensed clinical social worker;

(g) A licensed social worker;

(h) A certified social worker;

(i) An advanced registered nurse practitioner who has a specialty area in accordance with the American Nurses' Association's Scope and Standards of Psychiatric Mental Health Nursing Practice in accordance with 201 KAR 20:057;

(j) A licensed professional clinical counselor; or

(k) A licensed professional clinical counselor associate.

(7) An incidental interpreter service shall be provided by an interpreter licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing pursuant to KRS 309.301. [~~Mental health services shall be provided by:~~

~~(a) An individual currently licensed by the Kentucky Board of Examiners of Psychology in accordance with KRS Chapter 319 as a:~~

~~1. Licensed psychologist;~~

~~2. Licensed psychological practitioner;~~

~~3. Certified psychologist with autonomous functioning;~~

~~4. Certified psychologist; or~~

~~5. Licensed psychological associate;~~

~~(b) A school psychologist currently certified by the Kentucky Education Professional Standards Board;~~

~~(c) A school social worker currently certified by the Kentucky Education Professional Standards Board;~~

~~(d) A licensed clinical social worker currently licensed by the Kentucky Board of Social Work;~~

~~(e) A licensed social worker currently licensed by the Kentucky Board of Social Work;~~

~~(f) A certified social worker currently licensed by the Kentucky Board of Social Work;~~

~~(g) A guidance counselor currently certified by the Kentucky Education Professional Standards Board;~~

~~(h) A psychometrist currently certified by the Kentucky Education Professional Standards Board;~~

~~(i) An advanced registered nurse practitioner who has a specialty area in accordance with the American Nurses' Association's Scope and Standards of Psychiatric Mental Health Nursing Practice in accordance with 201 KAR 20:057;~~

~~(j) A licensed professional clinical counselor as defined in KRS Chapter 335; or~~

~~(k) A licensed professional counselor associate as defined in KRS Chapter 335.~~

~~(7) In order to provide an incidental interpreter service, an interpreter shall be licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing as required by KRS 309.300 to 309.319.~~]

(8) Orientation and mobility services shall be provided by an orientation and mobility specialist certified by the:

(a) Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP); or

(b) National Blindness Professional Certification Board (NBPCB).

(9) Respiratory therapy services shall be provided by a respiratory care practitioner [~~certified by the Kentucky Board of Respiratory Care as required by KRS 314A.010 314A~~].

Section 5. Reimbursement. (1) Reimbursement for SBHS shall be provided in accordance with the school-based health service reimbursement provisions established in 907 KAR 1:035[~~, Section 5~~].

(2) A school-based health services provider shall certify the expenditure of state or local funds for school-based health services in accordance with 702 KAR 3:285.

Section 6. Individualized Education Program. An IEP shall:

(1) Be developed, reviewed, and revised in accordance with:

(a) 707 KAR 1:320; and

(b) 34 C.F.R. 300.324; and

(2) Not be considered authorized unless it has been approved by an IEP team [~~providers shall certify expenditure of state or local funds to provide covered school-based health services to Medicaid-eligible children as specified in 702 KAR 3:285~~].

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 12, 2009

FILED WITH LRC: November 13, 2009 at 9 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 Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, December 14, 2009)

922 KAR 1:060. Federal Title IV-E adoption assistance.

RELATES TO: KRS 199.500(1), 199.502, 199.555, 199.557, Chapter 625, 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3), Pub.L. 110-351

STATUTORY AUTHORITY: KRS 194A.050(1), 199.557(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.557(4) requires the cabinet to implement federal Title IV-E adoption assistance payments in accordance with the administrative regulations promulgated by the cabinet. This administrative regulation establishes guidelines for the implementation of the federal Title IV-E adoption assistance program for children who may otherwise grow up in foster care.

Section 1. Definitions. (1) "Adoption assistance agreement" is defined by 42 U.S.C. 675(3).

(2) "Adoption subsidy" means a payment for a special needs child placed for adoption when an adoption assistance agreement is complete.

(3) "Federal Title IV-E adoption assistance" is defined by KRS 199.557(1).

(4) "Nonrecurring adoption expenses" is defined by 42 U.S.C. 673(a)(6).

(5) "Relative" means the father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, niece, great grandmother, great grandfather, great aunt, or great uncle of the child.

Section 2. Adoption Assistance Eligibility Criteria. (1) A child shall be determined by the cabinet as a special needs child in accordance with 42 U.S.C. 673(c), if:

(a) The child is available for adoption in accordance with:

1. KRS 199.500(1);

2. KRS 199.502; or

3. KRS Chapter 625;

(b) The child has a specific factor or condition described by KRS 199.555(1) that makes the child difficult to place for adoption without adoption assistance; and

(c) Effort has been made to place the child with an appropriate adoptive parent without providing adoption assistance.

(2) If the child has a strong emotional tie with the prospective adoptive parent while in the care of the prospective adoptive parent as a foster child an exception to subsection (1)(c) of this section shall be made.

(3) A special needs child shall:

(a) Meet the eligibility criteria established in 42 U.S.C. 673 when the adoption proceedings are initiated including:

1. Eligibility for Aid to Families with Dependent Children [~~as the program was~~] effective on July 16, 1996, upon the child's removal [~~when the child was removed~~] from the home of a relative;

2. Eligible for Supplemental Security Income; [~~or~~]

3. Status as a child:

a. Born to a minor parent who is receiving Title IV-E foster care maintenance; and

b. Who has received Title IV-E foster care maintenance; and

(b) Not have a parent with custody or legal claim to the child.

4. Having been in foster care for sixty (60) consecutive months on or after October 1, 2009; or

5. Status as a sibling of a child described in subparagraph 1 or 4 of this paragraph to be placed in the same adoption placement as the child; and

(b) Not have a parent with custody or legal claim to the child.

(4) In accordance with 42 U.S.C. 673, as amended by Pub.L. 110-351, effective October 1, 2009, eligibility for Aid for Families with Dependent Children specified in subsection (3)(a)1 of this section shall not apply to a child who is at least:

(a) Sixteen (16) years old on September 30, 2010;

(b) Fourteen (14) years old on September 30, 2011;

(c) Twelve (12) years old on September 30, 2012;

(d) Ten (10) years old on September 30, 2013;

(e) Eight (8) years old on September 30, 2014;

(f) Six (6) years old on September 30, 2015;

(g) Four (4) years old on September 30, 2016;

(h) Two (2) years old on September 30, 2017; or

(i) Any age on September 30, 2018.

(5) If an adoption assistance agreement is terminated in accordance with Section 7 of this administrative regulation, a child previously eligible for federal Title IV-E adoption assistance shall be treated as having the same financial circumstances **as the child had when originally adopted**[~~at the time of the child's original adoption~~].

Section 3. Parental Standards. A parent receiving a child eligible for adoption assistance shall meet the same standards as those applied to other adoptive applicants in accordance with:

(1) 922 KAR 1:350; or

(2) 922 KAR 1:310.

Section 4. Adoption Placement Agreement. (1) Prior to [~~placing~~] a [~~child with~~] a prospective adoptive parent receiving an adoption subsidy, the prospective adoptive parent and a cabinet representative shall review and sign the adoption placement agreement.

(2) The adoption placement agreement shall advise the prospective adoptive parent of the:

(a) Special needs of the child;

(b) Cabinet's expectations; and

(c) Services offered by the cabinet to assist the prospective adoptive parent in the adoption process.

Section 5. Adoption Assistance Agreement. (1) At the time of or prior to finalization of the adoption, an adoptive parent and the cabinet shall negotiate and sign an adoption assistance agreement which shall:

(a) Be in effect in accordance with 42 U.S.C. 675(3) and 45 C.F.R. 1356.40(b);

(b) Determine the nature and amount of the adoption subsidy; and

(c) Remain in effect until terminated, even if the adoptive parent moves out of the Commonwealth of Kentucky.

(2) If an adoption is finalized, the cabinet shall pay nonrecurring adoption expenses incurred by an adoptive parent during the adoption of a special needs child pursuant to 45 C.F.R. 1356.41.

(3) If a child is eligible for adoption assistance under 42 U.S.C. 673(a)(2)(A)(ii)(I)(bb), the requirement of Section 4(1) of this administrative regulation shall be waived.

(4) An adoption assistance payment shall begin on the date that the adoption assistance agreement is signed by the adoptive parent.

(5) The amount of federal Title IV-E adoption assistance shall not exceed the amount that would be paid for foster care maintenance for the same child, in accordance with 42 U.S.C. 673(a)(3), including medically-fragile, specialized medically-fragile, and care plus resource home per diem reimbursements established by the Department for Community Based Services. A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance to exceed a care plus resource home per diem reimbursement established by the Department for Community Based Services.

Section 6. Federal Title IV-E Adoption Assistance. (1) [~~Unless a circumstance in accordance with subsection (2) of this section is met,~~] Federal Title IV-E adoption assistance shall continue in accordance with KRS 199.557 and 42 U.S.C. 673(a)(4) until the child reaches age:

(a) Eighteen (18); or

(b) Twenty-one (21), if the child is determined to have a disability in accordance with subsection (2) of this section.

(2) Disability determination.

(a) In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), an adopted special needs child shall have a disability that warrants continuation of the child's federal Title IV-E adoption assistance if the child has been determined to meet the definition of permanent or total disability pursuant to 42 U.S.C. 1382c(a)(3) by either the:

1. Social Security Administration; or

2. Medical review team of the cabinet.

(b) [~~The factors to be considered by the medical review team~~] In making a child's disability determination**, the medical review team shall consider** [~~shall include~~]:

1. The child's medical history and subjective complaint regarding an alleged physical or mental disability, illness, or impairment; and

2. Competent medical testimony relevant to whether:

a. A physical or mental disability, illness, or impairment exists; and

b. The disability, illness, or impairment is sufficient to reduce the child's ability to gain full-time employment or pursue opportunities in a state or federal education program.

(c) Other factors to be considered **by the medical review team** in making a determination shall include the child's:

1. Age;

2. Employment history;

3. Educational background; and

4. Subjective complaint regarding the alleged effect of the physical or mental condition on the child's ability to support and care for self.

(d) The child shall be referred, if necessary, for further appraisal of his or her abilities.

(e) If the medical review team makes the disability determination, the medical review team shall provide a written report of the determination under this subsection to the cabinet and the:

1. Child, if the child is age eighteen (18) or older; or

2. Adoptive parent, if the child is under age eighteen (18).

(3) Federal Title IV-E adoption assistance may include:

(a) Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a special needs child; and

(b) An adoption subsidy.

Section 7. Termination of Adoption Assistance Payments. In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), federal Title IV-E adoption assistance payments shall be terminated if:

(1) The adoptive parent requests;

(2) The child reaches age:

1. Eighteen (18); or

2. Twenty-one (21)**,** if the child is determined to have a disability in accordance with Section 6(2) of this administrative regulation;

(3) The cabinet determines that the:

1. Adoptive parent is no longer legally responsible for the support of the child; or

2. Child is no longer receiving support from the adoptive parent; or

(4) No adoptive parent who signed the adoption assistance agreement remains living.

Section 8. Adoption Assistance Renegotiation. (1) Renegotiation of an adoption assistance agreement may be requested by the adoptive parent before or after the adoption is finalized in accordance with 42 U.S.C. 673.

(2) The renegotiated amount of federal Title IV-E adoption assistance payments shall be agreed upon by the:

(a) Adoptive parent; and

(b) Cabinet.

(3) If the adoption assistance payment is renegotiated in accordance with subsection (1) and (2) of this section, the cabinet and adoptive parent shall sign a new adoption assistance agreement.

(4) Federal Title IV-E adoption assistance payments shall not be changed by a move of the adoptive parents out of the state or country.

Section 9. Service Appeal. An applicant for adoption assistance payments or an adoptive family aggrieved by a cabinet action shall be granted an administrative hearing in accordance with 922 KAR 1:320.

Section 10. Notice of Change. (1) Cabinet staff shall provide notice of termination of adoption assistance payments:

(a) Ten (10) calendar days in advance; and

(b) In accordance with 922 KAR 1:320, Section 6.

(2) In accordance with 42 U.S.C. 673, an adoptive parent shall notify the cabinet of any change in circumstance that would make the adoptive parent ineligible for adoption assistance payments or change the amount of the adoption assistance payment.

Section 11. Extraordinary Medical Expenses. In accordance with KRS 199.555(6), an adoptive child shall be eligible for assistance with extraordinary medical expenses.

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: August 28, 2009

FILED WITH LRC: September 30, 2009 at 11 a.m.

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, December 14, 2009)

922 KAR 6:010. Standards.

RELATES TO: KRS 45.357, 45A.455, 61.870-884, 194A.060 [~~194B.060~~], 273.405-273.453, Chapter 344, 45 C.F.R. 96, 42 U.S.C. 9901-9926, Pub.L. 111-5

STATUTORY AUTHORITY: KRS 194A.050(1), 273.448(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 273.448(1)(a) requires the state administering agency to establish in accordance with applicable state and federal laws and regulations, standards for community action agencies by which the administrative, fiscal and programmatic effectiveness of the federal act shall be measured. This administrative regulation establishes [~~sets forth~~] the requirements for the operation and oversight of the community action agencies relative to the community services block grant funding, intended to provide services for residents meeting poverty income guidelines issued by the U.S. Department of Health and Human Services. This administrative regulation imposes a stricter requirement than the federal mandate because additional reporting requirements are necessary to comply with KRS 45.357, and the Kentucky Civil Rights Laws, KRS Chapter 344, are more inclusive than those required under 42 U.S.C. 9918(c)(1). The imposition of additional requirements and responsibilities is to ensure necessary compliance with applicable state laws.

Section 1. Definitions. (1) **"Commissioner" means the Commissioner for the Department for Community Based Services, Cabinet for Health and Family Services.**

(2) "Community action agency" is defined by KRS 273.410(2).

(3) "Community action board" means the board of directors of a community action agency which is a political subdivision.

(4)[~~(2)~~] "Community Services Block Grant" or "CSBG" means Community Services Block Grant funds made available by 42 U.S.C. 9901-9926.

(5) "Designating official" means the chief elected official of the eligible political subdivision or subdivisions if the political subdivision is a community action agency.

(6)[~~(3)~~] "Governing board" means the board of directors of a private nonprofit community action agency.[~~(4) "Designating official" means the chief elected official of the eligible political subdivision or subdivisions where the political subdivision is a community action agency.~~]

Section 2. Board of Directors. (1) Each community action agency shall establish and maintain a board of directors in accordance with KRS 273.437 and 273.439.

(2) Governing boards and community action boards shall adopt written bylaws. The bylaws shall include:

(a) The purpose of a community action agency;

(b) Duties and responsibilities of the board;

(c) Number of members on the board;

(d) Qualifications for a board membership;

(e) The types of membership;

(f) The method of selecting a member;

(g) Terms of a member;

(h) Officers and duties;

(i) Method of electing an officer and chairperson;

(j) A standing committee, if applicable;

(k) Provision for approval of programs and budgets;

(l) The frequency of board meetings and attendance requirements; and

(m) Provision for official record of meetings and action taken.

(3) The boards and designating officials

(a) May delegate the responsibility to carry out a program of a community action agency and fiscal requirements to an executive director; and

(b) [~~but~~] shall not delegate final approval, responsibility, accountability, or direction of policy.

Section 3. Board Meetings. (1) Unless a requirement constitutes a breach of an individual's right to confidentiality, a board meeting shall be open to the public.

(2) A simple majority shall constitute a quorum for a [~~the~~] board meeting.

(3)(a)[~~(2)~~] A meeting of a governing board or a [~~boards and~~] community action board [~~boards~~] shall be recorded.

(b) Minutes shall be made of the meeting [~~and a written record made~~].

(c) The minutes shall include:

1.[~~(a)~~] Date, time, and place of meeting;

2.[~~(b)~~] Names of members attending;

3.[~~(c)~~] Topics discussed, problems, recommendations made or presented, and a plan for change and improvements;

4.[~~(d)~~] Decisions reached and actions taken;

5.[~~(e)~~] An executive director's report and other reports as are presented; and

6.[~~(f)~~] Recommendations made by the community action board to designating officials of the eligible political subdivision.

(d)[~~(3)~~] The minutes shall be:

1.[~~(a)~~] Approved by the board of directors and signed by the appropriate officer; and

2.[~~(b)~~] Copied and distributed to each board member, the executive director, and the department within thirty (30) days of the minutes' approval in accordance with subparagraph 1 of this paragraph [~~prior to the next board meeting~~].

Section 4. Administration. (1) Each community action agency shall meet the federal assurances and reporting requirements in accordance with 42 U.S.C. 9901-9926, [~~and~~] 45 C.F.R. 96, and Pub.L. 111-5, Section 1512.

(2) Each community action agency in accordance with KRS 273.441 and 273.443, and with the knowledge and concurrence of appropriate officials and boards as required in KRS 273.437 and 273.439, shall:

(a) Submit reports, records, or other information the department deems necessary to:

1. Determine fiscal, administrative, and programmatic effectiveness in utilization of CSBG funds; and

2. Fulfill requirements of KRS 45.357;

(b) Develop written personnel **policies** [~~rules and regulations~~] including:

1. A job classification plan with the provision of a systematic arrangement of job positions in the agency indicating title, [~~and~~] related duties, and responsibilities for each position. For those positions which are sufficiently similar as to the duties performed and to the scope of responsibility, equal pay ranges shall be:

a. Allocated to the same job classification; and

b. Reviewed at least every four (4) years;

2. A job specification for each job classification, **including** required education, experience, training, skills and other qualifications required which shall be reviewed at least every four (4) years;

3. A compensation plan with the provision of a pay plan for community action agency employees outlining pay grades or salary rates, salary adjustments, salary advancements, and overtime adjustments as appropriate for the job classifications. Rates of pay shall be:

a. Consistent with the functions outlined in the job classification plan; and

b. Reviewed at least every four (4) years;

4. Attendance and leave policies that shall:

a. Be reviewed at least every four (4) years; and

b. Include the accumulation and credit of:

(i) Annual leave;

(ii) Sick leave;

(iii) Compensatory or overtime leave;

(iv) Military leave;

(v) Leave related to the birth or adoption of a child;

(vi) Court leave;

(vii) Voting leave;
(viii) Absence without leave; and
(ix) Other conditions of specific leave;
5. A fringe benefit plan that shall:
a. Be reviewed every four (4) years; and
b. Include the coverage and conditions of those items provided by the community action agency, such as [without affecting]:
(i) Basic salary or wage rates including hospitalization insurance;
(ii) Dental insurance;
(iii) Holidays;
(iv) Disability leave;
(v) Personal leave;
(vi) Retirement or pension; and
(vii) Deferred compensation;
6. An affirmative action plan with a policy statement that [it is] the community action agency's intention is to give equal opportunity in hiring, advancement opportunities, and in work assignments in accordance with KRS Chapter 344;
7. A personnel grievance procedure that shall:
a. Include a plan for resolving employee grievances and complaints; and
b. Describe the method that the community action agency follows if an employee is dissatisfied with some aspect of the employee's [his] working conditions. The procedure shall outline:
(i) How the employee files a complaint;
(ii) Who reviews the complaint;
(iii) Who hears the complaint;
(iv) Who may attend a hearing;
(v) Length of time for the hearing decision; and
(vi) The next level of appeal, if the employee is still dissatisfied with the hearing results; and
8. Hiring and firing practices, with a plan for:
a. Hiring an employee;
b. Promotions;
c. Demotions;
d. Job postings and advertisements;
e. Resignations;
f. Layoff procedures;
g. Disciplinary actions; and
h. Dismissal procedures;
(c) Make available a copy of the **community action agency's personnel policies**[personnel rules and administrative regulations] to staff;
(d) **Ensure**[Assure] that there is no discrimination against an applicant or recipient of CSBG services in accordance with KRS 344.015(2), 344.020, and 42 U.S.C. 9918(c)(1);
(e) Be responsible for compliance with conditions of contracts and grants, appropriate state and federal laws, administrative regulations, and cost principles;
(f) Indemnify the cabinet against a claim, including attorney fees and other costs of litigation which may result from damage caused by the [a] community action agency's employee, [or the] negligent acts, or omissions of the community action agency's agent, employee, or subcontractor;
(g) **Ensure**[Assure] that a notice, information pamphlet, research report and similar public notice prepared and released by the community action agency pursuant to its contract for CSBG funds shall include the statement: "This project is funded, in part, under a contract with the Cabinet for Health and Family Services with funds from the Community Services Block Grant Act of the U.S. Department of Health and Human Services"; and
(h) **Ensure**[Assure] that no employee or representative of the [a] community action agency with procurement authority shall participate either directly or indirectly in an activity that is in conflict with the provisions of KRS 45A.455 and 42 U.S.C. 9918.
(3)(a) Each community action agency with the knowledge and concurrence of appropriate officials and boards, shall:
1. Develop written fiscal and programmatic operation policies and manuals; and
2. Review and update the policies and manuals [which are] at least annually [reviewed and updated].
(b)[(a)] Fiscal records shall be maintained in accordance with generally acceptable accounting procedures and practices and in conformity with 42 U.S.C. 9916(a).
(c)[(b)] A current written financial report shall be presented to a board of directors:
1. At least quarterly; or
2. More frequently, if requested by the board or the cabinet.
(d)[(c)] The program manual, which may be characterized as an operations manual, shall include:
1. Criteria for determining eligibility of an individual for CSBG programs;
2. **The** intake process including information needed to approve an applicant;
3. Procedures for accepting a referral from another agency;
4. Instructions for records to be kept on applicants, [and] clients, and statistical data on intake;
5. Procedures for reports to be made to the cabinet and frequency;
6. Procedures to be followed if an applicant is found ineligible;
7. Complaint procedures [and hearings];
8. A description of each program's organizational structure, major lines of authority, and areas of responsibility within the CSBG programs; and
9. Procedures for documenting the extent of participation of the poor in the community action agency's CSBG programs.
(4)(a) The community action agency shall **ensure**[assure] that a client dissatisfied with services rendered under a CSBG contract shall be provided an opportunity to file a formal complaint and to be heard at the local level.
(b) A client may attempt to resolve the issue by submitting a written complaint to the community action agency within thirty (30) calendar days after the date of the community action agency's action or alleged act.
(c) The community action agency shall provide the client a written response to the complaint within thirty (30) calendar days of receipt of the client's complaint in accordance with paragraph (b) of this subsection.
(d) If extenuating circumstances concerning the client's case prolong review of the complaint, the executive director of the community action agency may grant an extension to the response timeframe given in paragraph (c) of this subsection.
(e)1. A client dissatisfied with a final written decision rendered by the community action agency in response to a complaint may request that the commissioner review the complaint and the community action agency's response.
2. A request for review shall be submitted to the commissioner within ten (10) days of the receipt of the community action agency's response.
3. Upon completion of the review, the commissioner or designee shall render a written **order** [recommendation] regarding the complaint within thirty (30) days unless:
a. Extenuating circumstances prolong the review of the complaint; and
b. The commissioner or designee notifies the client of the need for an extension to the timeframe specified in this subparagraph.
4. The community action agency shall abide by the **order**[recommendation].
(f) [If the grievance is not resolved as a result of the complaint procedure, the client shall be provided an opportunity to appeal a decision resulting from the local service appeal process to the department in accordance with 922 KAR 1:320, Section 8.] The complaint and hearing procedures shall be posted in each agency office.
(5) The community action agency shall ensure the design, implementation, and documentation of in-service training program for staff. Additional training shall also be documented for staff.

Section 5. Income Eligibility, Validation, and Determination. (1) To be eligible to participate in services and programs funded with CSBG funds, an individual's or family's income shall [be limited to those that fall] at or below:
(a) 200 percent of the current poverty level issued each year by the U.S. Department of Health and Human Services and published in the Federal Register through September 30, 2010, in accordance with Pub.L. 11-5; or
(b) 125 percent of the current poverty level issued each year

by the United States Department of Health and Human Services and published in the Federal Register after September 30, 2010.

(2)[(a)] Information and referral services shall be provided to an individual or family without regard to income.

(3)[(b)] If screening for programs where the eligibility factor is higher, the factor for that other program applies.

(4)[(2) To receive a service or to participate in a CSBG funded program, an individual or a family shall meet the income criteria established in subsection (1) of this section.

(a)] The individual or family head shall sign a document attesting to the amount of declared income and eligibility to receive services.

(5)[(b)] A community action agency or its worker shall require that a client produce proof of income eligibility in which a dated copy of the client's documentation shall be placed in the client's file.

(6)[(3)] Initial eligibility shall be:

(a) Determined within thirty (30) days of application; [and]

(b) Redetermined if there is a change in circumstance; and [or]

(c) Redetermined at least annually, if there is not a change in circumstance.

Section 6. Maintenance of Case Records. (1) A log shall be maintained by the community action agency on a referral made by an outside agency or individual including:

(a) Date of referral;

(b) A referring agent; and

(c) Reason for referral and disposition.

(2) A CSBG case record shall be maintained on each applicant accepted for a service or benefit.

(a) The record shall include:

1.[(a)] Intake information as follows:

a.[1.] Name, address, and telephone number of the applicant;

b.[2.] Birthdate;

c.[3.] Sex;

d.[4.] Race or ethnic origin;

e.[5.] Proof of income;

f.[6.] Level of education completed;

g.[7.] A presenting problem;

h.[8.] Date of presenting problem;

i.[9.] Staff member gathering information;

j.[10.] Referral agent, if applicable;

k.[11.] Approval or disapproval for services or benefits and date; and

l.[12.] The signature of the person making the determination or the referral;

2.[(b)] Client progress toward a documented goal during a service or benefit period;

3.[(c)] Chronological recording of supervisory and staff contacts with a client [reflecting work accomplished] during the service or benefit period;

4.[(d)] Copies of correspondence and other pertinent information;

5.[(e)] Redetermination of eligibility, if **required by Section 5(6) of this administrative regulation**[appropriate]; and

6.[(f)] Information regarding **any** termination of services and benefits[, if appropriate].

(b)[(3)] Each community action agency shall ensure that a client case record is maintained in conformity with existing laws pertaining to confidentiality in accordance with KRS 194A.060 [194B.060].

(c) The records shall be maintained in a location which is secure and convenient to service delivery staff.

(3)[(4)] The community action agency shall ensure development and implementation of a written client case record retention and disposal schedule.

(4)[(5)] If the community action agency, or any program or subdivision of the community action agency, meets the definition of a public agency as defined in KRS 61.870(1), [then] the community action agency, the program, or the subdivision of the community action agency meeting the definition shall comply with the open records law, KRS 61.870-61.884.

Section 7. Monitoring and Evaluation Reports. **Each community action agency in accordance with KRS 273.441, 273.443, and 273.448(1), and with the knowledge and concurrence of appropriate officials and boards as required in KRS 273.437 and 273.439, shall meet the following:**

(1) Ensure the development of a data collection and recordkeeping system that allows for administrative, programmatic, and fiscal monitoring and evaluation;

(2) Ensure the design and implementation of program reviews and studies to determine under or over utilization of each program, and progress towards goals and objectives; and

(3) Permit monitoring, review, and evaluation of the total community action agency operation by the department or its designee.[Each community action agency, with the knowledge and concurrence of appropriate officials and boards, is required in KRS 273.437 and 273.439 to meet the following:

(1) Establish effective controls that are designed to:

(a) Achieve and maintain maximum standards of service delivery; and

(b) Utilize and conserve physical and financial assets;

(2) Ensure the development of a data collection and recordkeeping system that allows for administrative, programmatic, and fiscal monitoring and evaluation;

(3) Ensure the design and implementation of program reviews and studies to determine under or over utilization of each program, progress toward goals, objectives; and

(4) Permit monitoring, review, and evaluation of the total community action agency operation by the department or its designee in accordance with the terms of the contract and appropriate federal and state laws.]

Section 8. Matching Requirement. A contractor receiving CSBG funds pursuant to 922 KAR 3:040 shall provide a twenty (20) percent local match in accordance with KRS 273.446(3).

Section 9. CSBG Program State Plan. A copy of the state's CSBG program plan may be obtained by submitting a written request to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

PATRICIA R. WILSON, Commissioner
JANIE MILLER, SECRETARY

APPROVED BY AGENCY: August 11, 2009

FILED WITH LRC: August 28, 2009 at noon

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

STATE BOARD OF ELECTIONS
(Amended After Comments)

31 KAR 2:020. Accuracy test and setting of voting systems prior to election day.

RELATES TO: KRS 116.025, 116.065, 117.075, 117.125, 117.145, 117.155, 117.165, 117.175, 117.195, 117.205, 117.255, 117.275, 117.285, 117.375, 117.377, 117.379, 117.381, 117.383, 117.385, 117.387, 117.389, 117.391, 117.393, 118.015, 118.215(1), 118.770, 118A.010, 119.005, 424.290

STATUTORY AUTHORITY: KRS 117.383, 117.389

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.383(1) requires the State Board of Elections to prescribe rules and administrative regulations to achieve and maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting. KRS 117.383(6) requires the State Board of Elections to prescribe rules and administrative regulations to provide for checking the accuracy of the equipment. KRS 117.389 requires the State Board of Elections to prescribe the manner by which the county clerk shall have the automatic tabulating equipment tested not less than five (5) days prior to the election day. This administrative regulation establishes the procedures for checking the accuracy of the voting equipment and testing the automatic tabulating equipment prior to each election to achieve and maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting and setting the voting equipment prior to the public examination performed according to KRS 117.165.

Section 1. Definitions. (1) "Accuracy Board" means the county board of elections or at least two (2) individuals appointed by the county board of elections in accordance with this administrative regulation.

(2) "Accuracy test" means the checking of the accuracy of the voting equipment required by KRS 117.383(6) and the testing of the automatic tabulating equipment and voting systems required by KRS 117.389.

(3) "Accuracy test checklist" means a checklist prepared by the county board of elections for each voting machine and voting system in accordance with Section 4 of this administrative regulation.

(4) "Ballot style" means the ballot unique to a specific precinct listing the federal, state, county, and local candidates, offices, and ballot questions for which a voter in the precinct may cast a vote.

(5) "Certificate" means the County Board of Elections Certificate of Completion of Accuracy Test, SBE 16.

(6) "Certification" means the information provided by the county clerk to the program administrator that includes an accurate listing of all federal, state, county, and local candidates; offices; and ballot questions to be placed on the ballot for each voting machine or voting system for each precinct within five (5) days of receiving the certification of candidates by the Secretary of State, pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770.

(7) "Program administrator" means the county clerk or authorized assistant designated to configure the voting machines and voting systems as required by 31 KAR 2:010.

(8) "Public examination" means the examination conducted by the county board of elections prior to election day pursuant to KRS 117.165.

(9) "Tally sheet" means a listing of the results from the test deck to be compared to the results printout from each voting machine or voting system after an accuracy test.

(10) "Test deck" means a set of example ballots marked with predetermined results or a set of predetermined votes prepared by the Accuracy Board used to perform an accuracy test on each voting machine or voting system in accordance with Section 3 of this administrative regulation.

(11) "Verification sheet" means the sheet approved by the county board of elections for each voting machine and voting system in accordance with Section 6 of this administrative regulation.

(12) "Voting machine" means hardware, which is a component of the voting system, used or relied upon by a voter in casting and recording his or her votes in a precinct in an election, which has been approved by the State Board of Elections for use in elections in the Commonwealth of Kentucky, pursuant to KRS 117.379 and 117.381.

(13) "Voting system" means a system of components of hardware and software, including the voting machine, used by a voter to cast a ballot and by the election officials to tabulate the votes on election day, which has been approved by the State Board of Elections for use in elections in the Commonwealth of Kentucky, pursuant to KRS 117.379 and 117.381.

Section 2. Accuracy Board. (1) The Accuracy Board shall oversee the conduct of an accuracy test on each voting machine or voting system and the completion of an accuracy test checklist on each voting machine and voting system prior to the public examination.

(2) The Accuracy Board shall consist of the members of the county board elections, or the county board of elections may designate at least two (2) individuals to perform the duties of the Accuracy Board. The appointed Accuracy Board shall include not more than one (1) employee of a voting machine vendor or manufacturer.

(3) The Accuracy Board shall sign the certificate upon completion of the accuracy tests on all voting machines or voting systems and the completion of an accuracy test checklist on each voting machine and voting system.

(4) The Accuracy Board shall provide the certificate and all accuracy test materials to the chair of the county board of elections not later than the date established for the public examination.

Section 3. Preparation of the Test Deck. (1) The Accuracy Board shall approve a test deck prior to an accuracy test.

(2) A test deck shall consist of all ballot styles to be used in the election or a predetermined series of votes for each ballot style to be used in the election.

(3) Multiple test desks may be approved by the county board of elections or Accuracy Board to complete an accuracy test on each voting machine or voting system.

(4) The test deck created shall include the following:

(a) One (1) or more ballots with a vote for each candidate for office and each option of a ballot question, if applicable;

(b) One (1) or more ballots that contain votes in excess of the total number of votes allowed by law to be cast by a voter;

(c) One (1) or more ballots that contain fewer votes than the total number of votes allowed by law to be cast by a voter;

(d) One (1) or more ballots that contain a straight-party vote, if applicable; and

(e) One (1) or more ballots that contain a write-in vote, if applicable.

(5) The Accuracy Board shall approve a tally sheet showing the results of each test deck.

Section 4. Accuracy Test Checklist. (1) The county board of elections shall create an accuracy test checklist for each voting machine and voting system to be used in the election to be reviewed by the Accuracy Board after each accuracy test is performed on the voting machines or voting systems.

(2) An accuracy test checklist shall include the following:

(a) The date; assigned precinct, if applicable; description of device; serial number; firmware version identification; confirmation that the firmware version has been certified by the Kentucky State Board of Elections, pursuant to KRS 117.379 and 117.381; and the name of the person completing the accuracy test checklist;

(b) Boxes to be checked to confirm the following shall be performed during an accuracy test:

1. Visual inspection of the voting machine or voting system and all working parts to check for damage or defects;

2. Visual inspection of all power sources, cables, card slots, and locking devices, including an accounting for all cables, batteries, power cords, and locking devices; and

3. Completion of the processing of the test desk through the voting machine or voting system with a printout showing an errorless test upon comparison with the tally sheet. If the accuracy test may be performed on the voting system, then the checklist for each voting machine shall provide a space to indicate that an accuracy test was not performed on the individual voting machine because it was performed on the voting system; and

(c) A signature line for the person completing the accuracy test checklist.

Section 5. Conducting the Accuracy Test. (1) The Accuracy Board shall supervise the completion of an accuracy test checklist for each voting machine and voting system and an accuracy test of each voting machine or voting system and the automatic tabulation equipment prior to the public examination.

(2) The Accuracy Board shall supervise the accuracy tests with the use of the test deck in the following manner:

(a) If the voting system to be used in the county on election day may be configured, in accordance with 31 KAR 2:010, with all possible ballot styles for every precinct to be used in the county during the election, the accuracy test shall be conducted by setting up at least one (1) voting machine connected to the voting system and testing each ballot style upon which voters may cast a ballot in the county during the election; or

(b) If the voting system to be used in the county during the election may only be prepared, in accordance with 31 KAR 2:010, with one (1) ballot style for each precinct, the accuracy test shall be conducted on each voting machine used in the county during the election.

(3) The Accuracy Board shall indicate whether the accuracy tests were performed on the voting system or on each voting machine on the accuracy test checklist for each voting system and each voting machine.

(4) An accuracy test shall be conducted by processing each test deck prepared under the direction of the county board of elections or the Accuracy Board for each voting machine or voting system to be used in the election.

(5) If an error in a voting machine or voting system is detected during an accuracy test, the cause shall be ascertained, the error shall be corrected, and the accuracy test shall be performed until an errorless count is ascertained.

(6) The Accuracy Board shall ensure that all sections of the accuracy test checklist shall be completed on each voting machine and voting system.

(7) A printout from each voting machine or voting system from the accuracy test shall be created, signed, and dated by the person conducting the test. The printout shall be attached to the accuracy test checklist for that voting machine or voting system.

(8) After reviewing all accuracy test checklists and applicable printouts, and after verifying that an errorless accuracy test was performed on each voting system or voting machine, the Accuracy Board shall sign the certificate.

(9) The accuracy test checklists, test decks, tally sheets, and signed printouts from the voting machines and voting systems shall be retained in a secure location until presentation to the county board of elections prior to the public examination.

Section 6. Setting of the Voting Systems After the Accuracy Test. (1) The Accuracy Board shall supervise the setting of the voting machines and voting systems after the completion of an errorless accuracy test to prepare the voting machines and the voting systems to be turned over to the county board of elections before the public examination.

(2) The county clerk shall prepare or approve a verification sheet for each voting machine and voting system, containing the following:

(a) The assigned precinct name and number, if applicable;

(b) The serial numbers of the voting system components;

(c) The seal numbers;

(d) Counter number at the beginning of the election, if applicable;

(e) Counter number at the end of the election, if applicable;

(f) Signature line for the program administrator who sealed the voting system after the accuracy test; and

(g) Signature lines for **the precinct judges** [~~at least two (2) of the precinct election officers of differing political party preference~~] to be signed on the election day.

(3) A voting machine shall be identified with the precinct number in which it shall be used during the election on the verification sheet, unless the voting machine is designated to be held in reserve for use pursuant to KRS 117.215. If a voting machine is held in reserve, the precinct number and name shall be assigned on the verification sheet at the time of delivery to the precinct.

(4) The serial numbers of the voting machine and the seal numbers used to seal the voting machine shall be recorded on the verification sheet for the precinct in which the voting machine is to be used. The program administrator who sealed the voting machine shall sign the verification sheet.

(5) The program administrator shall set the voting machine counters to zero, in accordance with KRS 117.155, creating a printout showing that the voting machine has been set to zero or by verifying and recording that the counter is set to zero on the verification sheet.

(6) Copies of the verification sheet shall remain with the program administrator, the voting machine, and the county clerk.

Section 7. The County Board of Elections Review of the Accuracy Test. (1) After the Accuracy Board has completed the accuracy tests, signed the certificate, and provided the accuracy test materials to the chair of the county board of elections, the county board of elections shall review the accuracy test materials.

(2) After ascertaining that an errorless accuracy test has been performed on each voting machine or voting system and the completion of an accuracy test checklist on each voting machine and voting system, the county board of elections shall verify that the voting machines and the voting systems are prepared for the public examination and shall sign the certificate.

(3) The county board of elections shall secure all test decks, tally sheets, printouts, accuracy test checklists, and the county board of elections' certificate with the election materials to be retained with the county clerk for the retention period prescribed by KRS 117.275(8). A copy of the county board of elections' certificate shall be attached to the minutes of the county board of elections' meeting in which the public examination occurs.

Section 8. Public Examination. (1) When the voting machines and voting systems have been prepared for the election, the county board of elections shall review the verification sheets for each voting machine and voting system at the public examination conducted pursuant to KRS 117.165.

(2) The verification sheet that remains with the voting machine shall be signed by **the precinct election judges** [~~at least two (2) precinct election officers~~] on the election day.

(3) At the end of the election day the verification sheets shall be returned to the county clerk along with the election supplies and retained by the county clerk for the retention period prescribed by KRS 117.275(8).

Section 9. Incorporation by Reference. (1) "County Board of Elections Certificate of Completion of Accuracy Test", SBE 16, September 2009, is incorporated by reference.

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

TREY GRAYSON, Chair

APPROVED BY AGENCY: December 14, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

CONTACT PERSON: Kathryn H. Gabhart, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief narrative summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the county clerks and the county boards of elections to follow to achieve and maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting, KRS 117.383(1), to provide for checking the accuracy of the equipment, KRS 117.383(6), and to test the automatic tabulating equipment not less than five (5) days prior to the election day, KRS 117.389.

(b) The necessity of this administrative regulation: This regulation is necessary for the State Board of Elections to comply with the mandates of KRS 117.383(1) and (6) and 117.389.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes procedures for the county clerks and county boards of elections to follow in testing the voting equipment as required by KRS 117.383(1) and (6) and KRS 117.389.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation takes the original mandates of the accuracy testing process, formerly provided in 31 KAR 2:010, and refines this process to better conform with the mandates of the statutes, and provides a more practical process to be used with the new voting systems required to be used pursuant to the Help America Vote Act of 2002, 42 U.S.C. 15301 to 15545.

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

(a) How the amendment will change the existing administrative regulation: This administrative regulation is amended after comments to ensure that Section 8(2) of 31 KAR 2:020 is consistent with Section 6(2)(g) to ensure that the Verification Sheet is signed by at least two (2) precinct officers of differing political party preference on election day. The regulation has been amended to require the precinct election judges to sign the Verification Sheet.

(b) The necessity of the amendment to this administrative regulation: This amendment after comments is necessary to ensure consistency in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment after comments ensures consistency in the procedures for testing the voting equipment as required by KRS 117.383(1), (6) and KRS 117.389.

(d) How the amendment will assist in the effective administration of the statutes: This amendment after comments is necessary to ensure consistency in the regulation and the procedures for testing the voting equipment as required by KRS 117.383(1) and (6) and KRS 117.389.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All voting machine vendors doing business in Kentucky, all county clerks, all precinct election officers, and all voters.

(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 county will have to appoint an accuracy board to oversee the accuracy testing of the voting equipment. Each county will have to draft an accuracy test checklist and a verification sheet for each voting machine and voting system, which can be accomplished on the same form.

(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 are anticipated with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The voting machine vendors and the county elections officials will have a more practical procedure to follow in testing the voting systems and voting machines in a consistent and accurate manner as required by the statutes. The precinct officers and voters will have more confidence in the voting systems and voting machines that will be used each election day.

(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: All election expenses are born by the county fiscal court, with the State Board of Elections reimbursing the county $255 per precinct for each election, pursuant to KRS 117.345. However, the 2008-2010 enacted Budget of the Commonwealth has set a fixed rate per precinct with a voting machine for each election below the amount established in KRS 117.345.

(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 are anticipated at this time.

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

(9) TIERING: Is tiering applied? Tiering was not applied because this amendment applies equally to all citizens.

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) State what unit, part, or division of local government this administrative regulation will affect: All election officials and boards.

(3) State the aspect or service of local government to which this administrative regulation relates: The conduct of elections.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues: None

Expenditures: No impact and the expenditures are anticipated.

Other Explanation: All election expenses are born by the county fiscal court, with the State Board of Elections reimbursing the county $255 per precinct for each election, pursuant to KRS 117.345. However, the 2008-2010 enacted Budget of the Commonwealth has set a fixed rate per precinct with a voting machine for each election below the amount established in KRS 117.345. The counties should have already been following a process of testing the voting systems and voting machines prior to each election prior to this administrative regulation under the former mandates of 31 KAR 2:010. We have merely taken the process required in the former 31 KAR 2:010 and refined the language to better suit the new voting systems required for use by the Help America Vote Act, 42 U.S.C. 15301 to 15545. We do not anticipate that this new administrative regulation will impact the costs of testing voting systems and voting machines.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amended After Comments)

301 KAR 1:016. Use of [~~public~~] lands and waters on[~~at department-owned~~] lakes owned or controlled by the department.

RELATES TO: KRS [~~150.025,~~] 150.090, [~~150.620,~~] 150.625, 150.640

STATUTORY AUTHORITY: KRS 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of Chapter 150. KRS 150.620 authorizes the department to promulgate administrative regulations governing the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation governs all private struc-

tures on property owned or controlled by the department, the private use of public lake water, and permitted and prohibited activities on department-owned or controlled land surrounding department-owned waters. [~~private boat docks on department-owned property, the use of lake water for domestic purposes and permitted and prohibited activities on department-owned and controlled land surrounding department-owned waters.~~]

Section 1. Definitions. (1) "Adjacent property owner" means the owner of real property that shares a common boundary with department property.

(2) "Boat dock" means a privately owned floating or fixed structure that is used by an adjacent landowner to moor a boat on department property.

(3) "Boat dock tag" means a metal tag provided by the department that has a unique combination of letters and numbers, and is permanently affixed to an approved boat dock so that it is visible from the lake.

(4) [~~in a lake owned, leased or otherwise controlled by the department.~~

~~(3)~~] "Department property" means lands or waters [~~owned, leased or otherwise~~] controlled by the department through ownership, lease, license, easement, or cooperative agreement at the department-owned[~~public fishing~~] lakes listed in Section 2 of this administrative regulation.

(5) "Existing structure" means a grandfathered access or non-access structure built on department property prior to July 1, 2009.

(6)[~~(4) "Enclosed superstructure" means a roofed structure with solid, glass, screen or similar walls, but does not include dock boxes and similar storage containers less than four (4) feet high.~~

~~(5)~~] "Normal pool" means a water level equal to the elevation of the lake's principal spillway.

(7) "Permanent dwelling" means a private residence on an adjacent landowner's land that is both fixed in location and of durable permanent construction, but does not include tents, motorized vehicles, trailers, camp trailers, or any type of interim construction or residence.

(8) "Shoreline use permit" means a permit issued by the department that allows an adjacent landowner to construct a new access structure or to keep or rebuild an existing structure on department land.

Section 2. Boat Docks, Boat Dock Applications, and Boat Dock Construction Approval. (1) A boat dock may be constructed on department property by an adjacent landowner if the adjacent property:

(a) Shares at least a fifty (50) foot boundary with the department property if the adjacent boundary lines were extended to the water's edge; and

(b) Is located at one (1) of the following lakes:

1. Beaver Lake;
2. Boltz Lake;
3. Bullock Pen Lake;
4. Carpenter Lake;
5. Corinth Lake;
6. Elmer Davis Lake;
7. Guist Creek Lake;
8. Kincaid Lake;
9. Kingfisher Lakes; or
10. Lake Malone.

(2) Prior to constructing a boat dock, an adjacent landowner shall submit a completed Boat Dock Application to the department, accompanied by the permit fee for the dock as established in 301 KAR 3:022, except that the fee shall be pro-rated for every year remaining in the ten (10) year permit period.

(3) Boat dock construction shall not begin until:

(a) An on-site inspection by an authorized department employee has been completed; and

(b) The applicant has obtained written approval from the department to begin construction.

(4) Boat dock construction approval shall be valid for one (1) year from the date of issuance.

(5) A boat dock applicant shall:

(a) Report to the department when construction of a new boat dock is complete, an existing boat dock has been rebuilt, or an existing dock has been brought into compliance; and

(b) Allow inspection of the boat dock by an authorized department employee.

(6) An adjacent landowner with an existing boat dock on Bullock Pen Lake shall be required to obtain a Boat Dock Permit, but shall not be required to pay the permit fee until 2018.

Section 3. Boat Dock Permits. (1) The department shall issue a Boat Dock Permit and Boat Dock Tag to an adjacent landowner:

(a) Who has satisfied the boat dock application requirements in Section 2 of this administrative regulation;

(b) Who has a boat dock that has passed a final inspection by an authorized department employee;

(c) Whose permit has not been revoked pursuant to Section 8 of this administrative regulation; and

(d) Who remains compliant with all the provisions of this administrative regulation.

(2) The Boat Dock Tag issued with the boat dock permit shall be affixed to the front edge of the dock facing the lake.

(3) A Boat Dock Permit shall:

(a) Be valid for a ten (10) year period, with the current permit period expiring December 31, 2017 and the next permit period beginning January 1, 2018;

(b) Be renewed within ninety (90) days of the termination date by:

1. Paying the fee as established in 301 KAR 3:022; and
2. Submitting an affidavit that no unauthorized addition or modification has been made to the boat dock;

(c) Be transferable at no additional cost, if ownership changes, for the remainder of the ten (10) year period; and

(d) Not be renewed by the department if the boat dock is out of compliance, except as established in Section 4 or Section 7 of this administrative regulation;

(e) Prohibit the permittee from renting, leasing, or licensing the dock to another person for any purpose.

(4) An adjacent landowner who owns multiple contiguous properties adjacent to department property shall:

(a) Not be issued more Boat Dock Permits than the number of completed permanent dwellings on those properties; or

(b) Qualify for one (1) Boat Dock Permit if there is no completed permanent dwelling on any of the contiguous properties.

(5) An adjacent landowner shall only be eligible for one (1) Boat Dock Permit per adjacent property.

Section 4. Boat Dock Specifications and Requirements. (1) A boat dock constructed or rebuilt after July 1, 2009 shall not exceed:

(a) Eight (8) by sixteen (16) feet in dimension; and

(b) A surface area of more than 128 square feet.

(2) The **longest dimension of the boat dock** [~~eight (8) foot or shorter section~~] shall be positioned perpendicular to the shore.

(3) A boat dock shall not have more than one (1) walkway connecting the boat dock to the shore that shall:

(a) Be positioned perpendicular to the shore;

(b) Be anchored to department property by:

1. A concrete pad no larger than ten (10) square feet; or
2. Two (2) metal posts on each side of the walkway.

(c) Not be wider than four (4) feet;

(d) Be the shorter of:

1. A length sufficient to reach a water depth of two (2) feet when the lake is at normal pool; or
2. Twenty (20) feet in length.

(e) Not be used for boat mooring.

(4) The flotation for a boat dock shall be made from materials manufactured for marine use.

(5) All wooden material on a boat dock shall be kiln-dried lumber that has been commercially pressure-treated with a wood preservative and shall not be painted.

(6) A boat dock shall moor no more than:

(a) Two (2) boats; or

(b) One (1) boat and up to two (2) personal watercraft on Lake Malone and Guist Creek Lake only.

(7) A personal watercraft mooring system that is attached to an approved boat dock at Lake Malone and Guist Creek Lake shall:

(a) Be a commercially manufactured floating system;
(b) Not exceed:
1. Six (6) feet in width and fifteen (15) feet in length if mooring a single personal watercraft; or
2. Twelve (12) feet in width and fifteen (15) feet in length if mooring two (2) personal watercraft; and
(c) Be attached to one (1) side of the boat dock, but not the front.
(8) An additional jonboat, canoe, or personal watercraft may be stored on top of a boat dock, except a personal watercraft shall only be stored on top if a commercially manufactured self-loading ramp is used.
(9) The following items shall be prohibited on boat docks:
(a) An enclosed structure;
(b) An unenclosed structure; and
(c) Any other items, structures, or deviations not identified in a previously obtained waiver, pursuant to Section 7 of this administrative regulation.
(10) A boat dock that was constructed prior to July 1, 2009 shall be exempt from the requirements established in subsections 1 through 6 of this section for the life of the boat dock.
(11) A boat dock owner who rebuilds an existing dock, including those exempted by subsection 10 of this section, shall reapply and meet all the requirements established in this section, except as established in Section 7 of this administrative regulation.
(12) A boat dock permit holder who applies to rebuild an existing, legally permitted boat dock during the ten (10) year permit period shall be exempt from paying the permit fee until permit renewal.
(13) The following boat dock repair activities shall be considered rebuilding:
(a) Flotation replacement;
(b) Joist replacement; or
(c) Walkway replacement.

Section 5. Access Structures and Shoreline Use Permits. (1) A shoreline use permit shall only be issued for the following lakes:
(a) Beaver Lake;
(b) Carpenter Lake;
(c) Corinth Lake;
(d) Elmer Davis Lake;
(e) Guist Creek Lake;
(f) Kincaid Lake; and
(g) Lake Malone.
(2) Shoreline Use Permits shall be valid for a fifteen (15) year period beginning January 1, 2010.
(3) An adjacent landowner with an existing structure shall apply for a Shoreline Use Permit within ninety (90) days following the effective date of this administrative regulation.
(4) Prior to constructing a new access structure, rebuilding an existing access structure, or permitting an existing structure, an adjacent landowner shall submit to the department:
(a) A completed Shoreline Use Permit Application; and
(b) The appropriate permit fee if applicable, as established in 301 KAR 3:022, except that the fee shall be prorated to the nearest five (5) year interval that remains in the fifteen (15) year permit period.
(5) An adjacent landowner shall not begin construction of a new access structure or begin rebuilding an existing access structure until:
(a) An authorized department employee conducts an on-site visit and determines the type of access structure necessary for safe passage to the lake; and
(b) The adjacent landowner receives written approval from the department.
(6) Access structure construction approval shall be valid for one (1) year from the date of approval.
(7) A Shoreline Use Permit shall not be issued unless all shoreline structures have passed final inspection by an authorized department employee.
(8) A new access structure shall only include the following:
(a) A ground level pathway that shall:
1. Only have pretreated lumber or railroad ties as edging;
2. Not consist of asphalt, concrete, or any other permanent surface;
3. Only consist of crushed stone, wood chips, or other removable material as fill between the edging, except that local natural stones or rocks may be used as steps;
4. Not exceed five (5) feet in width including the edging; and
5. Follow the natural contour of the land if possible.
(b) A raised ground level pathway that shall:
1. Not exceed eight (8) inches in height.
2. Not exceed forty (40) steps, with each step not exceeding five (5) feet in width and eight (8) feet in length;
3. Only consist of pretreated, unpainted lumber; and
4. Follow the natural contour of the land if possible.
(c) A raised staircase that shall:
1. Not exceed four (4) feet in width;
2. Not have more than one (1) landing that does not exceed four (4) feet in width and four (4) feet in length;
3. Not have more than twenty (20) steps if a landing is not used;
4. Not have more than thirty (30) steps if a landing is used;
5. Only consist of pretreated, unpainted lumber; and
6. Conform to prevailing building code standards for stairs for the county of record or, if such standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established by 815 KAR 7:120; or
(d) A foot bridge that shall:
1. Not exceed four (4) feet in width and twelve (12) feet in length;
2. Not use a tree as an anchoring device; and
3. Only consist of pretreated, unpainted lumber.
(9) An adjacent landowner who has an existing access structure that was constructed prior to July 1, 2009, shall be exempt from the requirements of subsection (8) of this section for the life of the structure, if the landowner applies for and maintains a valid Shoreline Use Permit.
(10) An adjacent landowner who rebuilds an existing access structure, including those grandfathered in subsection (9) of this section, shall comply with the requirements established in subsection (8) of this section, except as established in Section 7 of this administrative regulation.
(11) The following access structure repair activities shall be considered rebuilding:
(a) Joist replacement;
(b) Support beam replacement; or
(c) Stringer replacement.
(12) A Shoreline Use Permit shall:
(a) Be renewed every fifteen (15) years within ninety (90) days of the termination date by:
1. Paying the fee established in 301 KAR 3:022; and
2. Submitting an affidavit that an unauthorized addition or modification has not been made to a permitted structure.
(b) Be transferable at no additional cost, if ownership changes, for the remainder of the fifteen (15) year period; and
(c) Not be renewed if the access structure is out of compliance, except if the access structure was built prior to July 1, 2009.
(d) Be extended, by written request to the department, for an additional twelve (12) months if the property is transferred or the landowner dies during year fifteen (15) of the permit period.
(13) An existing noncompliant access structure, pursuant to Section 8 of this administrative regulation, shall be removed at the owner's expense.
(14) Nonaccess structures, such as gazebos or storage buildings**, excluding existing permanent dwellings**, shall be:
(a) Itemized in the adjacent landowner's Shoreline Use Permit; and
(b) Removed at the owner's expense by the year 2025.
(15) The Shoreline Use Permit fee, as established in 301 KAR 3:022, shall be based on the types of access structures established in subsection (8) of this section, and consist of the following three (3) tiers:
(a) A Tier I permitted structure shall include:
1. All compliant access structures pursuant to subsection (8) of this section;
2. An existing access structure with fifteen (15) or less steps that is not compliant, pursuant to subsection (8) of this section;

3. An existing footbridge; or

4. A new footbridge that is compliant, pursuant to subsection 8 of this section.

(b) A Tier II permitted structure shall include:

1. An existing access structure having thirty (30) or less concrete steps; or

2. An existing access structure that does not comply with the requirements established in subsection (8) of this section, and having sixteen (16) to thirty (30) steps.

(c) A Tier III permitted structure shall include:

1. An existing access structure, including a concrete access structure, that does not comply with the requirements established in subsection 8 of this section, and having more than thirty (30) steps;

2. A new access structure that does not comply with the requirements established in subsection (8) of this section, and requires a waiver pursuant to the requirements of Section 7 of this administrative regulation.

3. An existing staircase that has one (1) or more landings that exceed a four (4) feet in width or four (4) feet in length; or

4. An existing nonaccess structure, such as a storage shed or gazebo.

(16) If an adjacent landowner applies for a Shoreline Use Permit for multiple structures that cover more than one (1) tier, then a single permit will be issued at the highest tier level for which the applicant qualifies.

(17) A concrete access structure shall not be rebuilt.

Section 6. Other Activities on Department Property. (1) No person shall be permitted to take water from the lakes listed in Section 2 of this administrative regulation, except for:

(a) Residential use by adjacent landowners;

(b) Temporary use in a time of emergency drought; or

(c) An adjacent landowner who has been given the right to do so by deed.

(2) A person, without first obtaining written permission from the department, shall not:

(a) Place or build any unpermitted object or structure;

(b) Plant any vegetation;

(c) Place or use any mechanical equipment;

(d) Take water from any lake listed in Section 2 of this administrative regulation;

(e) Cut, clear, burn, damage, or kill trees or shrubs greater than two (2) inches in diameter measured at ground level; or

(f) Moor a boat to the shoreline for more than forty-eight (48) hours.

Section 7. Waivers. (1) An adjacent landowner shall first obtain a waiver from the department for any deviation to the specifications established in this administrative regulation by:

(a) Submitting a written request to the department; and

(b) Providing a detailed plan to the department of any planned deviation.

(2) A person shall not begin construction on a project that includes a planned deviation until the department has approved a waiver.

(3) The department, in deciding whether to grant a waiver for a new access structure, shall consider if:

(a) The deviation is in substantial compliance with the requirements established in this administrative regulation;

(b) The deviation poses a potential safety hazard;

(c) Topographical or other physical features of the land necessitate a deviation;

(d) The waiver request exceeds the staircase landing dimension or step limit by more than twenty (20) percent; and

(e) A new staircase will conform to prevailing building code standards for the county of record or, if such standards do not exist, complies with Section 1009 of the Kentucky Building Code Standards for stairs, as established in 815 KAR 7:120.

(4) The department, in deciding whether to grant a waiver for an existing access structure that is to be rebuilt, shall consider if:

(a) No other reasonable alternative exists that would comply with the staircase requirements of this administrative regulation; and

(b) The rebuilt staircase will conform to prevailing building code standards for the county of record or, if such standards do not exist, comply with Section 1009 of the Kentucky Building Code Standards for stairs, as established in 815 KAR 7:120.

(5) The department, in deciding whether to grant a waiver for a boat dock, shall consider if:

(a) The deviation is in substantial compliance with the requirements established in this administrative regulation;

(b) The deviation poses a potential safety hazard; and

(c) Topographical or other physical features of the land necessitate a deviation.

(6) An adjacent landowner, either individually or as a director or high managerial agent of a business organization, who violates any provision of this administrative regulation shall be denied a waiver for a new or rebuilt structure for a period of two (2) years from the date of the citation, with the waiver denial applying to:

(a) The individual; and

(b) Any business for which the person is a director or high managerial agent.

Section 8. Non-Compliance, Permit Revocation, and Appeals. (1) The department shall revoke each Boat Dock Permit and Shoreline Use Permit issued to a person if that permit holder:

(a) Without department approval, renovates, modifies, or makes an addition to an existing:

1. Boat dock;

2. Boat dock walkway;

3. Access structure; or

4. Nonaccess structure.

(b) Constructs or places a new nonaccess structure on department property;

(c) Fails to:

1. Maintain the boat dock, boat dock walkway, access structure, or non-access structure in a structurally sound condition; or

2. Renew the Boat Dock or Shoreline Use Permit within ninety (90) days of expiration.

(2) An adjacent landowner who has a noncompliant boat dock, boat dock walkway, access structure, or nonaccess structure shall be notified in writing by the department that the landowner has sixty (60) days to come into compliance, to remove the boat dock, walkway, or structure, or to make an appeal as established in subsection 6 of this section.

(3) If the requirements of subsection (2) of this section are not met within sixty (60) days, the department shall have the authority to remove the noncompliant structure at the owner's expense and the structure shall become the property of the department.

(4) If an adjacent landowner, either individually or as a director or high managerial agent of a business organization, violates any provision of this administrative regulation for a second time, then the department shall revoke for a period of three (3) years from the date of the second citation all Boat Dock Permits and Shoreline Use Permits issued to:

(a) The adjacent landowner;

(b) Any business organization for whom the individual adjacent landowner is a director or high managerial agent; and

(c) Any director or high managerial agent of the adjacent landowner who is a business organization.

(5) The following shall apply for any adjacent landowner whose permit is revoked pursuant to subsection (4) of this section:

(a) All structures shall be removed at the owner's expense within thirty (30) days of revocation if an appeal is not filed.

(b) If the structures are not removed by the owner within thirty (30) days and no appeal is filed, then the department shall have the authority to remove the structure at the owner's expense; and

(c) All structures removed pursuant to paragraph (b) of this subsection shall become the property of the department.

(6) An adjacent landowner whose waiver request is denied or whose permit is denied or revoked may appeal the decision in accordance with the provisions of KRS Chapter 13B.

(a) The department shall appoint a hearing officer and conduct the hearing in accordance with the provisions of KRS Chapter 13B;

(b) The hearing officer shall make a recommendation to the Department of Fish and Wildlife Resources' Commission;

(c) The commission shall make a decision by majority vote;

and

(d) An appeal of the Commission's decision shall be in accordance with the provisions of KRS Chapter 13B; and

(e) At the conclusion of all appeals or at the expiration of any appeal period for which an appeal has not been made:

1. The owner shall remove any unauthorized structure within ten (10) days, at the owner's expense;

2. An unauthorized structure that has not been removed by the owner within ten (10) days shall be removed by the department at the owner's expense; and

3. Each structure removed pursuant to subparagraph (2) of this paragraph shall become the property of the department.

Section 9. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Boat Dock Permit Application, 2010";

(b) "Shoreline Use Permit Application, 2010."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Fisheries Division, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Boat Dock Permits. (1) An adjacent property owner may construct a boat dock on department property if his property:~~

~~(a) Would be lake-front property if not for the intervening department property;~~

~~(b) Shares at least a fifty (50) foot boundary with department property; and~~

~~(c) Is located at one (1) of the following lakes:~~

~~1. Beaver;~~

~~2. Boltz;~~

~~3. Carpenter;~~

~~4. Corinth;~~

~~5. Elmer Davis;~~

~~6. Guist Creek;~~

~~7. Kincaid;~~

~~8. Kingfisher; or~~

~~9. Malone.~~

~~(2) A boat dock permit:~~

~~(a) Shall entitle the holder to construct one (1) boat dock meeting the specifications described in Section 4 of this administrative regulation.~~

~~(b) Shall be renewed every ten (10) years within ninety (90) days of the termination date by:~~

~~1. Paying the fee as specified in 301 KAR 3:022; and~~

~~2. Submitting an affidavit that an unauthorized addition or modification has not been made to the dock or walkway.~~

~~(c) Shall not give the permitted dock owners the ability to rent, lease, or license to another individual or use the dock for purposes other than mooring of the permittee's boat;~~

~~(d) Shall be transferable at no additional cost, if ownership changes, for the remainder of the ten (10) year period; and~~

~~(e) Shall not be renewed if the boat dock is out of compliance.~~

~~(3) A person who owns multiple contiguous properties adjacent to department property shall:~~

~~(a) Not be issued more boat dock permits than the number of dwellings on those properties; and~~

~~(b) Be entitled to one (1) boat dock permit if there is no dwelling on his contiguous properties.~~

~~(4) A person who constructed a boat dock under a permit issued before July 1, 1996 shall be permitted to have a boat dock that exceeds:~~

~~(a) The single dimension limit specified in Section 4 of this administrative regulation by two (2) feet; or~~

~~(b) The square footage limit specified in Section 4 of this administrative regulation by thirty-two (32) square feet.~~

~~Section 3. Constructing Boat Docks. (1) A person wishing to construct a boat dock shall:~~

~~(a) Submit a boat dock application on forms provided by the department, accompanied by:~~

~~1. The permit fee; and~~

~~2. Proof that the applicant's property is adjacent to department lands.~~

~~(b) Not begin construction until he or she has been issued a construction permit from the department. This permit shall be in addition to other required building permits.~~

~~1. A construction permit shall not be issued until an on-site visit by department personnel has been completed.~~

~~2. A construction permit shall be valid for one (1) year from the date of issuance.~~

~~(c) Inform the department when:~~

~~1. Construction of the new dock is complete; or~~

~~2. An existing dock has been brought into compliance.~~

~~(d) Allow inspection of the dock by a department employee.~~

~~(2) The department shall issue a boat dock permit and tag to a boat dock owner whose dock passes a final inspection for compliance with the provisions of this administrative regulation.~~

~~(3) The dock owner shall affix the tag issued with the permit to the edge of the dock facing the lake.~~

~~(4) A reconstructed boat dock shall meet specifications specified in Section 4 of this administrative regulation.~~

~~Section 4. Boat Dock and Walkway Specifications. (1) A person shall not construct a boat dock that:~~

~~(a) Measures more than sixteen (16) feet in any dimension;~~

~~(b) Has a surface area of more than 128 square feet;~~

~~(c) Has enclosed superstructures;~~

~~(d) Has unenclosed superstructures or other features not specified in the boat dock permit; or~~

~~(e) Contains metal drums, styrofoam blocks, or other homemade flotation devices. Only flotation material that has been manufactured for marine use may be used.~~

~~(2) A walkway connecting the bank and the dock shall:~~

~~(a) Be perpendicular to the shoreline.~~

~~(b) Be anchored to department property at the shoreline using either:~~

~~1. A concrete pad no larger than ten (10) square feet; or~~

~~2. Two (2) metal posts at each side of the walkway.~~

~~(c) Not be wider than four (4) feet.~~

~~(d) Be the shorter of:~~

~~1. A length sufficient to reach a water depth of two (2) feet when the lake is at normal pool; or~~

~~2. Twenty (20) feet in length.~~

~~(e) Not be used for boat mooring.~~

~~Section 5. Revocation of Permits. (1) The department shall cancel a boat dock permit if the permit holder:~~

~~(a) Makes an addition or modification to the dock or walkway without written permission from the department; or~~

~~(b) Fails to:~~

~~1. Renew the boat dock permit within ninety (90) days of expiration; or~~

~~2. Maintain the dock or walkway in a structurally sound condition.~~

~~(2) An owner of a noncompliant boat dock shall be notified in writing by the department that the owner has sixty (60) days to bring the boat dock into compliance or remove the boat dock, walkway, or other structure.~~

~~(3) If the boat dock has not been brought into compliance following the sixty (60) day notification period, the department shall have the authority to remove the non-compliant boat dock, walkway, or other structure.~~

~~Section 6. Use of Water. (1) A person shall not take water from the lake without the written consent of the department.~~

~~(2) The department shall not grant permission to take water from lakes other than:~~

~~(a) For the residential use of adjacent property owners; or~~

~~(b) For temporary emergency use in times of drought.~~

~~Section 7. Cutting Weeds or Grass. An adjacent property owner may cut weeds or grass, or clear underbrush less than two (2) inches in diameter, from department lakefront property which joins his property.~~

~~Section 8. Structures or Equipment on Department Property. (1) A person shall not place a road, ramp, building, steps, fence, garden, or structure on department property.~~

~~(2) Without written permission from the department, a person shall not:~~

~~(a) Place an object or structure at the water's edge to stabilize the bank; or~~

~~(b) Place or use mechanical equipment on department property.~~

~~(3) The department shall not issue a permit for mechanical equipment or bank stabilization unless it is in the best interest of the lake, the public, and other adjacent property owners.~~

~~Section 9. Waivers and Appeals. (1) A person with a noncompliant dock, walkway, or other structure that was in place prior to December 31, 1996 may apply to the department for a waiver.~~

~~(2) In deciding whether to grant or deny a waiver, the department shall consider:~~

~~(a) Whether the dock, walkway, or other structure:~~

~~1. Is in substantial compliance with this administrative regulation;~~

~~2. Poses a potential safety hazard;~~

~~3. Is in sound structural or mechanical condition;~~

~~(b) The geological or other physical features of the lake and the specific location; and~~

~~(c) The applicant's history of compliance with previous administrative regulations governing boat docks and structures on department property.~~

~~(3) A person whose waiver request is denied may request a hearing.~~

~~(a) The department shall appoint a hearing officer and conduct the hearing in accordance with the provisions of KRS Chapter 13B.~~

~~(b) The hearing officer shall make his recommendations to the Department of Fish and Wildlife Commission.~~

~~(c) The commission shall make its decision by majority vote.~~

~~(d) An appeal of the commission's decision shall be in accordance with the provisions of KRS Chapter 13B.~~

~~Section 10. Incorporation by Reference. (1) "Dock Application" form, 2007, Department of Fish and Wildlife Resources, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Fisheries, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

BENJY KINMAN, Deputy Commissioner
For JONATHAN GASSETT, Commissioner
MARCHETTA SPARROW, Secretary
APPROVED BY AGENCY: August 14, 2009
FILED WITH LRC: December 15, 2009 at 8 a.m.
CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs all private structures on property owned or controlled by the department, the private use of public lake water, and allowable activities on department-owned or controlled land surrounding department-owned waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly and safely manage public use of department owned or controlled lands surrounding department lakes, to provide reasonable access to these lakes by adjacent landowners, and to maintain construction standards for boat docks and access structures on department property.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to promulgate administrative regulations governing the use of lands and waters it has acquired for fish and wildlife management and public recreation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the requirements and purposes of the statutes identified in (1)(c) by establishing reasonable standards for use of department owned or controlled land surrounding department lakes. It will further assist the effective administration of the statutes by regulating the use of access and nonaccess structures by adjacent landowners on department property.

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

(a) How the amendment will change this existing administrative regulation: This amendment further defines the standards for boat docks and structures on department property and creates a Shoreline Use Permit system with subsequent standards for access and nonaccess structures on department property that surround department lakes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to effectively and reasonably manage and regulate the use of existing and new boat docks, access structures, and non-access structures on department property.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 636 permitted boat docks on department owned or controlled lakes. The department estimates that approximately 400 adjacent landowners will need to obtain a Shoreline Use Permit to legally retain or build access structures on department owned or controlled property.

(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: A landowner with property adjacent to Department property who wants to build or maintain an access or non-access structure on Department property will be required to obtain a Shoreline Use Permit from the Department. An adjacent landowner who wants to build or maintain a boat dock on Department property will have to apply for and obtain a Boat Dock Permit from the Department. During the 15-year Shoreline Use Permit period and the 10-year Boat Dock Permit period, permit holders shall be required to remain in compliance with the minimum standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A Boat Dock Permit will cost $100 for the entire 10-year permit period. Depending on the type of access structure requested, an adjacent landowner will pay either $100 for a Tier I permit, $200 for a Tier II permit, or $300 for a Tier III permit, which will be valid for the entire 15-year period beginning in 2010. Those people who apply after the beginning of either permit period will be charged a prorated amount dependent on the number of years left in the permit period.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A Boat Dock Permit will enable a permit holder to maintain or build a safe and structurally sound boat dock on department owned lakes. A Shoreline Use Permit will enable a permit holder to maintain or build a safe and structurally sound access structure on Department property that will enhance access to Department owned or controlled lakes. The existing regulation did not allow development activity on Department owned or controlled land. Through proper regulation of boat docks and shoreline use, the entities in question (3) will also benefit from increased aesthetics on lakefront property because construction and maintenance standards will be regulated.

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

(a) Initially: There will only be a minimal set-up cost for the administrative body to initially create the new Shoreline Use Permit system. The department already maintains, coordinates, and manages the Boat Dock Permit system with existing staff.

(b) On a continuing basis: There will be an annual cost to the department of approximately $50,000 to $75,000 to oversee, manage, and regulate Boat Dock Permits and Shoreline Use Permits. One employee will be designated to oversee and coordinate Boat Docks and Shoreline Use activity on 10 lakes throughout the state.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The newly established fees will be necessary to offset the costs of administering, maintaining, and regulating the Shoreline Use Permit system. The Boat Dock Permit fee remains unchanged.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation established new fees for a newly created permit (Shoreline Use Permit).

(9) TIERING: Is tiering applied? Yes. Tiering was applied to the structure of the Shoreline Use Permit system. It is a 3-tiered approach that is dependent on the type of structure(s) that an adjacent landowner wants to construct or keep on department property. The difference between the tiers is based on compliance with construction standards, size and complexity of the structures, and whether the structure is new or existing. Despite a tiered permit system, all adjacent landowners applying for a Shoreline Use Permit will be treated the same with regard to this regulation. All adjacent landowners who apply for a Boat Dock Permit shall 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? The Kentucky Department of Fish and Wildlife Resources' Fisheries Division and Law Enforcement Division 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 reasonably necessary to implement or carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to promulgate administrative regulations governing the use of lands and waters it has acquired for fish and wildlife management and public recreation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate approximately $40,000 to $80,000 for the first year through sales of the Shoreline Use Permits, but the permit shall be valid for a fifteen (15) year period.

(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? Following initial permitting of Shoreline Use structures (see 4a), it is unknown how many additional permits will be obtained by additional landowners in subsequent years. A conservative estimate during the fifteen (15) year permit period would be less than $20,000 for the remainder of the permit period. Currently there are 636 Boat Dock Permits for the 10-year period that ends December 31, 2017. The total amount of revenue from these permits was $63,600. It is unknown how many may be sold for next permit period that begins in 2018.

(c) How much will it cost to administer this program for the first year? It will cost the department approximately $50,000 to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? It will cost the department approximately $50,000-$100,000 annually for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:145. CAP grant award determination procedure.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535, 164.7889(3)

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4), 164.7889(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

Section 1. Each application submitted pursuant to 11 KAR 4:080 and 11 KAR 5:130 shall be reviewed for determination that all eligibility requirements established in 11 KAR 5:034 are met. To qualify for a CAP award based on financial need, the applicant's expected family contribution shall not exceed the maximum expected family contribution set forth by the U.S. Department of Education for the Federal Pell grant program[~~be $4,617 or less~~].

Section 2. CAP Grant Award. (1) Except as provided in subsection (2) of this section, the maximum CAP grant in any semester for an applicant accepted for enrollment on a full-time basis as determined by the educational institution in an eligible program shall be the lesser of:

(a) $950; or

(b) The amount of eligibility the student has remaining within the aggregate KHEAA grant limit.

(2) The maximum CAP grant in any semester for an applicant accepted for enrollment on less than a full-time basis as determined by the educational institution in an eligible program shall be:

(a) The amount specified in subsection (1)(a) of this section:

1. Divided by twelve (12); and

2. Multiplied by the number of credit hours in which the applicant is accepted for enrollment; and

(b) Not in excess of the maximum specified in subsection (1)(b) of this section.

(3) For any academic year, a student shall not receive more than $1,900 for an aggregate CAP grant award.

Section 3. (1) A KHEAA grant awarded to an incarcerated individual shall be considered an overaward to the extent that the KHEAA grant, in combination with financial assistance received from other sources, exceeds the student's actual cost for tuition, fees, and books.

(2) A KHEAA grant award shall not be made for a summer academic term.

Section 4. (1) A KHEAA grant award shall not exceed the applicant's cost of education less expected family contribution and other anticipated student financial assistance.

(2) The authority shall reduce or revoke a KHEAA grant upon receipt of documentation that financial assistance from other sources in combination with the KHEAA grant exceeds the determination of financial need for that student.

(3) The KHEAA Grant Program Officer (KGPO) and the grant recipient shall make every reasonable effort to provide the authority the information needed to prevent an overaward.

(4) If the applicant's expected family contribution, disbursed KHEAA grant amount, plus other student financial assistance exceeds his need by more than $300, any amount over $300 shall be considered to be an overaward. If an overaward occurs, this amount shall be returned to the authority immediately.

Section 5. (1) If the authority receives revised data that, upon recomputation, results in the student becoming ineligible for a KHEAA grant that has already been offered, but not disbursed, the grant shall be revoked.

(2) If the student is determined to be ineligible after the KHEAA grant has been disbursed, the student shall repay to the authority the entire amount of the KHEAA grant.

Section 6. If the educational institution receives revised data that, upon recomputation, necessitates reduction of the KHEAA grant, and:

(1) If the grant has not yet been disbursed for the fall academic term, the reduction shall be made to both the fall and spring disbursements, and the educational institution shall notify the student of the reduction;

(2) If the grant for the fall academic term has already been disbursed and the student enrolls for the spring academic term, the reduction shall be made to the spring disbursement, and the educational institution shall notify the student of the reduction;

(3) If the grant for the fall academic term has already been disbursed and the student does not enroll for the spring academic term, the educational institution shall notify the student of the fall overaward and the student shall repay the overaward to the authority; or

(4) If both the fall and spring disbursements have been made, the educational institution shall notify the student of the overaward and the student shall repay the overaward to the authority.

Section 7. (1) Students requested by the institution to provide verification of data for any financial assistance program shall provide the verification before receiving disbursement of a KHEAA grant.

(2) Any student who is awarded a KHEAA grant who fails to provide verification requested by the participating institution shall be deemed ineligible, and the grant shall be revoked.

CHARLEY SIMPSON, Chair

APPROVED BY AGENCY: November 19, 2009

FILED WITH LRC: December 11, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, January 25, 2009 at 10 a.m. at 100 Airport Road, 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 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 Monday, February 1, 2010. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602, phone (502) 696-7298, fax (502) 6960-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

(b) The necessity of this administrative regulation: KRS

164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation prescribes the award determination procedures for the CAP Grant Program. The amendment conforms to the content of the authorizing statutes by increasing the ceiling amount of expected family contribution and by setting the maximum amount that a student may receive in CAP grant funds for a given academic year.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students applying for a CAP grant meet the required financial need criteria and those students receive the maximum CAP grant allowed for any academic period. The amendment to this administrative regulation merely increases the maximum expected family contribution level necessary to demonstrate financial need, making grants available to more students and establishes the aggregate CAP grant award amount in any given academic year.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation merely provides that the maximum expected family contribution level necessary to demonstrate financial need for eligibility for the CAP grant program shall be that established for the Federal Pell grant program.

(b) The necessity of the amendment to this administrative regulation: The amendment conforms to the content of the authorizing statutes by establishing the ceiling amount of expected family contribution for participation in the CAP grant program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing the ceiling amount of expected family contribution under the CAP grant program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment merely established the maximum expected family contribution level for eligibility for participation in the CAP grant program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Students at a total of sixty-two (62) Kentucky postsecondary institutions are eligible to receive CAP grant funds. In the academic year ending June 30, 2009, there were 230,900 applicants for grant awards. A total of (40,387) students received KHEAA grant awards during that period.

(4) Provide an analysis of how the entities identified in (3) above 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 in order to comply with this administrative regulation or amendment: No actions will be required from either the student recipients or participating postsecondary institutions, as this amendment merely changes the expected family contribution for eligibility for the CAP grant program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to either the student recipients or participating postsecondary institutions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): No specific compliance is required under this regulation by either the student recipients or participating postsecondary institutions.

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

(a) Initially: The amendment to this administrative regulation establishes the maximum expected family contribution level necessary to demonstrate financial need, making grants potentially less available to students. However, the amount of the grant, the funds available for grants, and, in general, the overall cost of administering the program will neither increase nor decrease.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the authority for grant and scholarship programs while administrative costs are borne by the authority through receipts of the authority.

(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 administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(4), 164.7889(3).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 8:030. Teacher scholarships.

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

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).
(2) "Critical shortage area" is defined in KRS 164.769(2)(a).
(3) "Default" means the status of an obligation under this program that has entered repayment and upon which no payment has been made for a cumulative period of 180 days following the repayment begin date for the obligation.
(4) "Eligible program of study" is defined in KRS 164.769(2)(b).
(5) "Expected family contribution" is defined in KRS 164.769(2)(c).
(6) "Kentucky Teacher Internship Program" or "KTIP" means the one (1) year of supervision, assistance, and assessment that is:
(a) Required by KRS 161.030 and established in 16 KAR 7:010; and
(b) Also referenced as the beginning teacher internship.
(7) "Participating institution" is defined in KRS 164.769(2)(d).
(8) "Professional Teaching Certificate" means the document issued to:
(a) An individual upon successful completion of the beginning teacher internship; or
(b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and successful completion of the assessments.
(9) "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, or secondary instruction.
(10) "Qualified teaching service" is defined in KRS 164.769(2)(e).
(11) "Semester" is defined in KRS 164.769(2)(f).
(12) "Summer term" is defined in KRS 164.769(2)(g).
(13) "Teaching" means performing continuous classroom instruction pursuant to a Professional Teaching Certificate or during participation in the Kentucky Teacher Internship Program (KTIP), and shall not include substitute teaching.

Section 2. Eligibility of Renewal Applicants and Selection Process. (1) Applicants shall complete the Teacher Scholarship Application set forth in 11 KAR 4:080, Section 1(3), according to its instructions. The applicant shall ensure that the completed application and supporting data indicating the applicant's financial need are received by the authority on or before May 1, or the next regular business day if May 1 falls on a weekend or holiday, preceding the academic year for which the award is requested.
(2) Eligibility of renewal applicants. A person who previously received a loan or scholarship pursuant to KRS 164.769 shall be eligible to apply for and be considered for a renewal teacher scholarship if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.
(3) After awards are made to all qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:
(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.
(b) Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.
(c) Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

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

Section 4. Disbursements. (1) Disbursement of a teacher scholarship shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.
(2) The monies awarded under the Teacher Scholarship Program shall be transmitted directly to the participating institution on behalf of all students eligible to receive the scholarship by electronic funds transfer.
(3) The authority shall send to the participating institution a disbursement roster containing each recipient's name and Social Security number.
(4) The participating institution shall hold the funds solely for the benefit of the student eligible to receive the scholarship and the authority until the recipient has registered for classes for the period of enrollment for which the scholarship is intended.
(5) Upon the recipient's registration, the participating institution shall immediately credit the recipient's account and notify the recipient in writing that it has so credited that account, and deliver to the recipient any remaining scholarship proceeds.
(6) The participating institution shall indicate on the disbursement roster the date funds were either credited to the student's account or disbursed to the student, the name of a recipient for whom funds are being returned, the amount being returned, and the reason funds are being returned.
(7) If a recipient does not register for the period of enrollment for which the scholarship was awarded, or a registered student withdraws or is expelled prior to the first day of classes of the pe-

riod of enrollment for which the scholarship is awarded, the school shall return the proceeds to the authority pursuant to Section 12 of this administrative regulation.

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

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

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

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

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

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

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

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

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

(c) If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(3) Recipients who have completed their program of study and are providing qualified teaching service, but who are prohibited from participating in KTIP solely as a result of state budget limitations, shall receive cancellation under this program for each semester during which service is provided as specified in KRS 164.769(6)(c).

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

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

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

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

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

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

Section 8. Disability Discharge. A conditional or permanent discharge of the repayment obligation required by this program shall be granted by the Authority upon submission by the recipient of the documentation required by this section.

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

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

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

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

Section 9. Notifications. A recipient shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

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

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

(4) Change of name or address.

Section 10. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 11. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least three (3)[~~five (5)~~] years after the student ceases to be enrolled at the institution.

Section 12. Refunds. (1) If a student fails to enroll, withdraws, is expelled from the institution, or otherwise fails to complete the program on or after the student's first day of class of the period of enrollment or changes enrollment status, the Authority may be due a refund of monies paid to the institution on behalf of that student or a repayment of cash disbursements made to the student for educational expenses.

(2) If the student received financial assistance administered by the authority, the refund and repayment shall be due to the authority for its financial assistance programs in accordance with this section.

(3) The institution shall adopt and implement a fair and equitable refund policy for financial assistance administered by the authority which shall be:

(a) A clear and conspicuous written statement;

(b) Made available to a prospective student, prior to the earlier of the student's enrollment or the execution of the student's enrollment agreement, and to currently-enrolled students;

(c) Consistently administered by the institution; and

(d) Made available to the authority upon request.

(4) The institution's refund policy for financial assistance admi-

nistered by the authority shall either:

(a) Use the same methods and formulas for determining the amount of a refund as the institution uses for determining the return of federal financial assistance funds; or

(b) Be a separate and distinct policy adopted by the institution that is based upon:

1. The requirements of applicable state law; or

2. The specific refund standards established by the institution's nationally-recognized accrediting agency.

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

(6) If the institution determines that a refund of financial assistance is due in accordance with its policy, the institution shall allocate to the financial assistance programs administered by the authority the refund and repayment in the following descending order of priority prior to allocating the refund to institutional or private sources of financial assistance:

(a) CAP grant;

(b) KTG;

(c) Teacher scholarship;

(d) Kentucky Educational Excellence Scholarship;

(e) National Guard tuition assistance; and

(f) Early Childhood Development Scholarship.

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

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

(c) If a teacher scholarship recipient's enrollment is terminated with no assessment of tuition and fees by the institution, the full teacher scholarship shall be subject to:

1. Cancellation, if not yet disbursed; or

2. refund if the teacher scholarship has already been disbursed.

(8)(a) The institution shall remit to the authority the amount of funds allocated from the refund amount to the financial assistance programs administered by the authority as soon as possible but no later than thirty (30) days after the end of the term in which the student ceased to be enrolled.

(b) Refunds by the institution transmitted to the authority shall be accompanied by:

1. The student's name and Social Security number;

2. The reason for the refund;

3. The date of enrollment status change;

4. The semester and year; and

5. The calculation used for determining the refund.

Section 13. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution shall provide assurances that program information will be disseminated to students enrolled at the institution. The participating institution shall actively recruit students from minority population groups for participation in this program.

Section 14. Incorporation by Reference. (1) "Teacher Scholarship Program Application for Discharge", November 2007, is incorporated by reference.

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

CHARLEY SIMPSON, Chair

APPROVED BY AGENCY: November 19, 2009

FILED WITH LRC: December 11, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, January 25, 2010 at 10 a.m. at 100 Airport Road, 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 a 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 Monday, February 1, 2010. 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: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jo Carole Ellis, Director of Student Financial Aid

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(b) The necessity of this administrative regulation: KRS 164.744(2) authorizes the Authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. This administrative regulation is necessary to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.744(2) authorizes the Authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the Teacher Scholarship Program by establishing the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by extending cancellation of debt to those individuals who are providing teaching service as required by the authorizing statute but who are precluded from participating in the "Kentucky Teacher Internship Program" (KTIP) as a result of the state budget shortfall. Additionally, the amendment will reduce the mandatory records retention period under the Teacher Scholarship Program

for participating schools from five (5) years to three (3) years.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide loan forgiveness to recipients who are providing service as required under the program rather than penalize them for a situation beyond their control – namely insufficient of state funds to enable them to participate in KTIP. Further, the amendment is necessary to bring the records retention period under this program into alignment with those for the other state aid programs administered by the Authority.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by further specifying the conditions under which financial obligations incurred under this program can be cancelled through the provision of service. Further, the amendment conforms to the content of the authorizing statutes by establishing provisions related to the retention of records concerning program participants.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing cancellation of indebtedness for recipients who fulfill the purpose of the teacher scholarship program – becoming teachers and providing qualified teaching service within the Commonwealth of Kentucky. Additionally, it will assist in the effective administration of the statutes by establishing a records retention period concerning the teacher scholarship program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Teacher Scholarship recipients who seek to have their scholarship indebtedness cancelled through the rendering of qualified teaching service are affected by this administrative regulation. Additionally, all schools that participate in the teacher scholarship program will be affected by this regulation.

(4) Provide an analysis of how the entities identified in (3) above 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 in order to comply with this administrative regulation or amendment: Those recipients who seek to have their scholarship indebtedness cancelled by rendering qualified teaching service will be required to render qualified teaching service per the terms established in this regulation. Those schools who participate in this program will be required to retain records pertaining to the program for a period of three (3) years rather than five (5) years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to program recipients nor to schools in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All Teacher Scholarship recipients who provide qualified teaching service in-state but who are precluded from participating in KTIP due to a lack of state funding will nonetheless be eligible for loan cancellation as a result of this amendment.

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

(a) Initially: No cost.

(b) On a continuing basis: Same as 5(a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Teacher Scholarship Awards are funded from net lottery revenues transferred to the Authority for grant and scholarship programs while administrative costs are borne by the Authority through receipts of the Authority.

(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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.748(4), 164.753(3), 164.769(5), (6)(f).

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 administrative regulation will result in no additional expenditures by or revenues to the Authority during the first full year of its effectiveness.

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 4:020. Election costs and[,] county clerk reimbursement and form.

RELATES TO: KRS 117.343

STATUTORY AUTHORITY: KRS 117.015(1), 117.343

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.343 provides that the State Board of Elections may issue administrative regulations providing for the method and forms for documenting and submitting claims by a county clerk to request reimbursement from[~~may be reimbursed by~~] the State Board of Elections for the costs of employing office personnel necessary for the conduct of elections, including registration and purgation of voters in the county[~~, and purgation of voters~~]. This administrative regulation is necessary to provide a method and form for a county clerk to request reimbursement for these costs from the State Board of Elections.

Section 1. Reimbursement shall be based on the number of registered voters for the general election held in November.

Section 2. Incorporation by Reference. (1) "State Board of Elections Reimbursement of Personnel Election Expenses," SBE 2000, November 2009[~~DOA-48, (April 1997 Edition), State Board of Elections~~], is incorporated by reference.

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

TREY GRAYSON, Chair

APPROVED BY AGENCY: November 17, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2010, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kathryn H. Gabhart, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 117.343 provides that the State Board of Elections may issue administrative regulations providing for the method and forms for documenting and submitting claims by a county clerk to request reimbursement from the State Board of Elections for the costs of employing office personnel necessary for the conduct of elections, including registration and purgation of voters in the county. This administrative regulation is necessary to provide a method and form for a county clerk to request reimbursement for these costs from the State Board of Elections.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 117.343 and provide a method and form for the county clerk to use to be reimbursed for election related personnel expenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation provides the method and form for reimbursement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists and will assist the county clerks by providing a simple form for them to complete after each general election to be reimbursed by the State Board of Elections for election related personnel expenses.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes an outdated form that no longer matches the current procedures and incorporates a new form that better conforms to the current practices.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate a new simpler form for reimbursement, which also includes language to address when the Budget of the Commonwealth does not provide for reimbursement up to $.50 per registered voter in the county allowed by KRS 117.343.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the regulation and the new form conform to the authorizing statute by providing a method and form for reimbursement for election related personnel expenses, but also addresses when the Budget of the Commonwealth does not provide for reimbursement up to $.50 per registered voter in the county allowed by KRS 117.343.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 117.343 by providing a method and form for reimbursement for the county clerks for election related expenses, but will address the issues presented by the Budget of the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The State Board of Elections and the county clerks.

(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 State Board of Elections will send a county-specific form for each county after the regular election to be completed by the county clerk and returned to the State Board of Elections by an established deadline for reimbursement for election related personnel expenses.

(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 incurred by the county clerks in completing this form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The county clerks will benefit from reimbursement for election related personnel expenses each year.

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

(a) Initially: Ordinary printing costs already anticipated in budget for production of the form and the funds for reimbursement are provided in the State Board of Elections budget and the Budget of the Commonwealth.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget for production of the form and the funds for reimbursement are provided in the State Board of Elections budget and the Budget of the Commonwealth.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Ordinary printing costs already anticipated in budget for production of the form and the funds for reimbursement are provided in the State Board of Elections budget, pursuant to KRS 117.343, and the Budget of the Commonwealth.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all individuals affected.

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 State Board of Elections and the county clerks.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.343

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 for the state. The county clerk will be reimbursed for election related personnel expenses up to $.50 per registered voter in the county per year depending on whether the Budget of the Commonwealth allows for the full reimbursement.

(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 for the state. The county clerk will be reimbursed for election related personnel expenses up to $.50 per registered voter in the county per year depending on whether the Budget of the Commonwealth allows for the full reimbursement.

(c) How much will it cost to administer this program for the first year? The State Board of Elections will incur ordinary printing cost for the printing of the reimbursement forms for each county. The costs for reimbursement to the counties are included in the budget for the State Board of Elections and may also be determined by the Budget for the Commonwealth.

(d) How much will it cost to administer this program for subsequent years? The State Board of Elections will incur ordinary printing cost for the printing of the reimbursement forms for each county. The costs for reimbursement to the counties are included in the budget for the State Board of Elections and may also be determined by the Budget for the Commonwealth.

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

Revenues (+/-): See Explanation.

Expenditures (+/-): See Explanation.

Other Explanation: The State Board of elections will incur ordinary printing cost for the printing of the reimbursement forms for each county. The costs for reimbursement to the counties are included in the budget for the State Board of Elections and may also be determined by the Budget for the Commonwealth.

KENTUCKY STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 4:030. Reporting forms.

RELATES TO: KRS 117.085, 117.086, 117.235, 117.255, 117.275,117.355, 118.425, 119.307

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.086(8), 117.355(4), 118.425(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.355(4) requires the State Board of Elections to prescribe the forms for the precinct election sheriff and the county board of elections to report election irregularities and recommendations for improving the election process, to report special ballot and voter assistance usage statistics, and to report other information required by the state board. KRS 117.086(8) requires the State Board of Elections to prescribe a form on which the county board of elections shall report the number of rejected absentee ballots and the reasons for rejection of those ballots. KRS 118.425(4) requires the State Board of Elections to prescribe a form by which the county board of elections shall make out duplicate certificates of the total number of votes received by each of the candidates for office and the total number of votes for an against each of the ballot questions. This administrative regulation prescribes these forms.

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

(a) [~~SBE 53 -~~]"Precinct Election Sheriff's Postelection Report", SBE 53, April 2000[~~(April 2000 edition)~~];

(b) [~~SBE 54 -~~]"County Board of Elections Postelection Report", SBE 54, September 2002[~~(September 2002 edition)~~];

(c) [~~SBE 54A -~~]"County Board of Elections Postelection Statistical Report", SBE 54A, December 2005[~~(December 2005 edition)~~];

(d) [~~SBE 54B -~~]"County Board of Elections Precinct Election Officials Absence Report",SBE 54B, September 2002[~~(September 2002 edition)~~];

(e) [~~SBE 33A -~~]"List of Voters Issued Absentee Ballots",SBE 33A, November 2009[~~(September 2002 edition)~~];

(f) [~~SBE 33B -~~]"List of Rejected Absentee Ballots and Reasons for Rejected Ballots",SBE 33B, September 2002[~~(September 2002 edition)~~]; and

(g) [~~SBE 49 -~~]"Certification Official Count and Record of Election Totals",SBE 49, November 2003[~~(November 2003 edition)~~].

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

TREY GRAYSON, Chair

APPROVED BY AGENCY: November 17, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2010, at 10 a.m. local time at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kathryn H. Gabhart, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn H. Gabhart

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulations incorporates forms to be used by the counties to comply with the requires of KRS 117.355 which requires the precinct election sheriff and the county board of elections to report election irregularities and recommendations for improving the election process, to report special ballot and voter assistance usage statistics, and to report other information required by the state board. This administrative regulations also incorporates forms for the counties to use to comply with the requirements of KRS 117.086(8) the county board of elections to report the number of rejected absentee ballots and the reasons for rejection of those ballots and KRS 118.425(4) which requires the county board of elections to make out duplicate certificates of the total number of votes received by each of the candidates for office and the total number of votes for and against each of the ballot questions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 117.086(8), 117.355(4), and 118.425(4) which requires the State Board of Elections to prescribe the forms incorporated into this administrative regulation. This administrative regulation fulfills these requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.355 requires the State Board of Elections to prescribe the forms for the precinct election sheriff and the county board of elections to report election irregularities and recommendations for improving the election process, to report special ballot and voter assistance usage statistics, and to report other information required by the state board. KRS 117.086 requires the county clerk to keep a list of all persons who return their

paper absentee ballots or cast their absentee ballots in the clerk's office and send a copy of that list to the state board. KRS 118.425 requires the county board of elections to make out duplicate certificates of the total number of votes received by each of the candidates for office and the total number of votes for and against each of the ballot questions. This administrative regulation prescribes those forms for the making of reports.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the effective administration of the reporting requirements of KRS 117.086, 117.355, and 118.425, and the conduct of elections in KRS 117.015(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 provides a reference to the new paragraph (4) in KRS 118.425 which became effective in July 2008 that requires the State Board of Elections to prescribe a form to allow the county board of elections to make out duplicate certificates of the total number of votes received by each of the candidates for office and the total number of votes for and against each of the ballot questions. The amendment also updates the form used to list the voters issued absentee ballots.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform with the new paragraph (4) in KRS 118.425 and to update the form used to list the voters issued absentee ballots, pursuant to KRS 117.086(8).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 118.425 by providing a reference to the new paragraph (4) and updates the list of voters issued absentee ballots by providing a total line, pursuant to KRS 117.086(8).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective enforcement of KRS 118.425(4) and 117.086(8).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All precinct election sheriffs, county boards of elections, county clerks, and the State Board of Elections.

(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 county clerks, county board of elections, and precinct election sheriffs will have to ensure that they are completing the most recent forms incorporated into this amendment. The State Board of Elections will have to ensure that the counties have the most recent forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The county clerks, county board of elections, and precinct election sheriffs will incur no costs. The State Board of Elections will incur ordinary printing costs already anticipated in the current budget.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will ensure compliance with KRS 117.086, 117.355, and 118.425.

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

(a) Initially: Due to a low volume of forms on hand, ordinary printing costs already anticipated in budget.

(b) On a continuing basis: Ordinary printing costs already anticipated in budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State Board of Elections' budget.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation applies equally to all individuals affected.

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 precinct election sheriffs, county boards of elections and county clerks.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.086(8), 117.355(4), and 118.425(4).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Ordinary printing costs already included in the State Board of Elections' budget.

(d) How much will it cost to administer this program for subsequent years? Ordinary printing costs already included in the State Board of Elections' budget.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

PERSONNEL CABINET
(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 programs for state employees. KRS 18A.202 authorizes the secretary to establish work-related incentive programs for state employees. This administrative regulation establishes the requirements for an employee suggestion system incentive program and a state employee adoption benefit program.

Section 1. Employee Suggestion System. (1) Administration. An employee with status in the classified service or an employee governed by 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.

(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.

(b) Each cabinet secretary or agency head shall designate, in writing, the appointment of a coordinator who shall also serve on the council. The coordinator shall receive suggestions and establish and maintain internal procedures to ensure appropriate evaluation of suggestions.

(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 suggester 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 suggester 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; or

6. A suggestion which corrects an error or condition that exists because established procedures were not followed.

(d) If more than one (1) suggester 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)1. 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)1. 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-36, and the form shall be dated and signed by the individual making the evaluation.

(c)1. 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.

3.a. 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.

b. Documentation shall be conducted according to generally accepted accounting principles.

c. 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 a 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 reason for the decision.

(5) Council review.

(a)1. A suggestion 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.(i) The request shall be filed in the office of the employee suggestion system chairperson within the thirty (30) day period.

(ii) 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 suggestion'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 dispense 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 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor[~~200 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: December 7, 2009

FILED WITH LRC: December 7, 2009 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2010 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 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 February 1, 2010. 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: Dinah T. Bevington, 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: Dinah T. Bevington

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative 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 falling 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 falling 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 in the implementation of this 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 impacted by this administrative regulation? This administrative regulation amendment will affect all employees with status in the classified service of the executive branch, and employees falling 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. 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 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.

FINANCE AND ADMINISTRATION CABINET
Kentucky Department of Revenue
Office of Income Taxation
(Amendment)

103 KAR 15:140. Biodiesel tax credit.

RELATES TO: KRS [~~141.010,~~] 141.020, 141.030, 141.040, 141.0401, 141.422, 141.423, 141.424

STATUTORY AUTHORITY: KRS [~~131.130(1), 141.018,~~] 141.425

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.425 authorizes the department to promulgate administrative regulations necessary to administer the biodiesel tax credit as provided by KRS 141.422 to 141.424[~~141.425 regarding the biodiesel tax credit~~]. KRS 141.424 requires a biodiesel producer, biodiesel blender, or renewable diesel producer that is a pass-through entity or an agricultural cooperative association to notify the department electronically of all partners, members, shareholders, or beneficiaries who may claim any amount of the approved credit. This administrative regulation establishes guidelines and filing requirements for a biodiesel producer, biodiesel blender, or renewable diesel producer filing a tax credit claim for gallons of biodiesel produced in this state, gallons of biodiesel used in blended biodiesel produced in this state, or gallons of renewable diesel produced in this state[~~the credit~~].

Section 1. Definitions. (1) "Applicant" means a biodiesel producer, biodiesel blender, or renewable diesel producer that files a tax credit claim as provided by KRS 141.423[~~any person who applies for the biodiesel tax credit as allowed in KRS 141.422 - 141.425~~].

(2) "Application" means a tax credit claim filed with the department for gallons of biodiesel produced in this state, gallons of biodiesel used in blended biodiesel produced in this state, or gallons of renewable diesel produced in this state as provided by KRS 141.423(4)[~~request for the biodiesel tax credit as allowed in KRS 141.422 - 141.425~~].

(3) "ASTM" means American Society for Testing and Materials.

(4) "Biodiesel" is defined by KRS 141.422(4)[~~"Blender" means any person who combines biodiesel with petroleum diesel to create a mixture with a minimum of two (2) percent biodiesel~~].

(5) "Biodiesel blender" means an entity that blends biodiesel with petroleum diesel as provided by KRS 141.422(8)[~~"Corporation" is defined by KRS 141.010(24)~~].

(6) "Biodiesel producer" is defined by KRS 141.422(5)[~~"Department" is defined by KRS 141.010(2)~~].

(7) "Blended biodiesel" is defined by KRS 141.422(8)[~~"Distributive share" means the percentage of profits of a general partnership to which a partner is entitled~~].

(8) "Corporation" is defined by KRS 141.010(24).

(9) "Department" is defined by KRS 141.010(2).

(10) "Identification number" means:

(a) Social Security number for individuals;

(b) Federal Employer[~~Employee~~] Identification Number for general partnerships, estates, and trusts;

(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities.

(11) "Individual" is defined by KRS 141.010(7).

(12) "Limited liability pass-through entity" is defined by KRS 141.010(28).

(13) "Pass-through entity" is defined by KRS 141.010(26).

(14) "Renewable diesel" is defined by KRS 141.422(12).

(15) "Renewable diesel producer" is defined by KRS 141.422(13). [~~(9) "Person" means any corporation, company, association, partnership, limited liability company, limited liability partnership, other business association, or individual.~~]

Section 2. Application for Tax Credit. (1) An applicant[~~Any person requesting a biodiesel credit~~] shall file an application with the department on [~~the~~] Schedule BIO (Form number 41A720BIO), incorporated by reference.

(2) Schedule BIO[~~All applications for the biodiesel credit~~] shall be mailed to the department on or before January 15 for the preceding calendar year.

Section 3. [~~Information Required on or attached to the Schedule Bio. The following information shall be required on or attached to the Schedule BIO:~~

~~(1) The applicant's name and identification number;~~

~~(2) A description of how the applicant is taxed for Kentucky income tax purposes;~~

~~(3) The applicant's Kentucky Special Fuels License Dealer Account Number;~~

~~(4) The number of gallons of biodiesel produced during the calendar year;~~

~~(5) The number of gallons of blended biodiesel produced during the calendar year; and~~

~~(6) A copy of the certificate for biodiesel or statement of biodiesel reseller submitted to the Internal Revenue Service for federal tax purposes shall be attached to the Schedule BIO. The certificate for biodiesel or statement of biodiesel reseller submitted shall be the form submitted for the federal tax period that most closely corresponds with the period covered by the Schedule Bio.~~

~~Section 4.~~] Proof of ASTM specification[~~Standard~~]. (1) A biodiesel producer shall provide proof that biodiesel gallons reported on the Schedule BIO meet ASTM specification D6751 for biodiesel fuel (B100) blend stock distillate fuels[~~standard D6751-03~~].

(2) A biodiesel blender shall provide proof that the biodiesel gallons reported on the Schedule BIO meet[~~as part of blended biodiesel meets~~] ASTM specification D6751 for biodiesel fuel (B100) blend stock distillate fuels[~~standard D6751-03~~].

(3) A renewable diesel producer shall provide proof that the renewable diesel gallons reported on Schedule BIO meet ASTM specification D396 for fuel oils intended for use in various types of fuel-oil-burning equipment, D975 for diesel fuel oils suitable for various types of diesel fuel engines, or D1655 for aviation fuels.

(4) Proof submitted by a biodiesel producer or a renewable diesel producer [~~or blender~~] shall be in the form of documentation of laboratory results that certify that the biodiesel or renewable diesel reported on the Schedule BIO meet[~~meets~~] the ASTM specification[~~standard~~]. A biodiesel blender shall obtain from the biodiesel producer a copy of laboratory results that certify that the biodiesel reported on the Schedule BIO meet the ASTM specification[~~from the producer of the biodiesel that is blended and reported on the Schedule BIO~~]. An independent laboratory or a laboratory designated by the Kentucky Department of Agriculture shall be used to generate the laboratory results.

(5)[~~(4)~~] Failure to submit documented laboratory results that certify that the biodiesel, renewable diesel, [~~produced~~] or the biodiesel used in the blended biodiesel meet[~~meets~~] the ASTM specification with the Schedule BIO[~~standard~~] shall result in the department disallowing the credit.

(6)(a)[~~The biodiesel produced or blended shall not be eligible for the tax credit until proof is received that the biodiesel produced or biodiesel that is blended meets the ASTM standard. Gallons produced or blended after a new sample is proved to meet the ASTM standard shall be eligible for the credit, subject to the provisions of KRS 141.422 to 141.424 and this administrative regulation.~~

~~(5)(a)~~] Separate proof of the ASTM specification[~~standard~~] shall be provided to the department by a biodiesel producer biodiesel[~~or~~] blender, or renewable diesel producer on July 1 and December 31 for each calendar year that a Schedule BIO is submitted. [~~For the calendar year ending December 31, 2006, proof shall be submitted only on December 31, 2006.~~]

(b) Failure to submit proof of meeting the ASTM specifications on[~~standard by~~] the dates prescribed in this subsection shall result in the denial of the credit.

(c) If proof is timely submitted and the proof certifies that the biodiesel or renewable diesel does not meet the ASTM specification[~~standard~~], then[~~:~~

~~1.~~] all credit claimed for gallons of biodiesel, renewable diesel, or biodiesel used in the blended biodiesel [~~gallons~~] back to the previous testing date of July 1 or December 31 shall be disallowed.[~~;~~

~~2. For the calendar year ending December 31, 2006, all credit claimed for biodiesel or blended biodiesel gallons back to July 1, 2006 shall be disallowed; and~~

~~3. Subsequent samples submitted after a test sample is proved not to meet the ASTM standard may be submitted at any time during the calendar year that a Schedule BIO is submitted, subject to the provisions of subsection (4) of this section.~~]

Section 4.[~~5.~~] Use of the Tax Credit. (1) An[~~Any~~] applicant who is an individual shall apply the tax[~~any~~] credit [~~due~~] against the tax liability imposed by KRS 141.020.

(2) An[~~Any~~] applicant that is a corporation shall apply the tax[~~any~~] credit [~~due~~] against the tax liability imposed by KRS 141.040 and 141.0401.

(3) An applicant that is a limited liability pass-through entity shall apply the tax credit against the tax liability imposed by KRS 141.0401, and shall distribute the tax credit to each partner, member, or shareholder based on the partner's, member's, or shareholder's distributive share.

(4) An applicant that is a pass-through entity not subject to the tax imposed by KRS 141.0401 shall distribute the tax credit to each partner based on the partner's distributive share.

(5) An applicant that is an estate or trust shall apply the tax credit against the tax liability imposed by KRS 141.030, or shall distribute the tax credit to each beneficiary based on the beneficiary's distributive share.

(6) An applicant claiming the tax credit shall attach the Schedule BIO approved by the department to its tax return on which the tax credit is claimed.

(7) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1, Form 720S, Form number 41A720S(K-1), Form 765, Form number 41A765(K-1), or Form 765GP, Form number 42A765GP(K-1) incorporated by reference in 103 KAR 3:040, to the partner's, member's, or shareholder's tax return on which the credit is claimed.[~~.~~

~~(3) Any person except partners in a general partnership claiming the biodiesel tax credit shall attach the approved Schedule BIO to the tax return on which the biodiesel credit is claimed.~~

~~(4) Any partner in a general partnership claiming the biodiesel tax credit shall attach the Schedule BIO K-1, Form number 41A720BIO (K-1), to the tax return on which the biodiesel credit is claimed.~~]

Section 5.[~~6.~~] Electronic Filings for Pass-through Entities[~~General Partnerships~~]. (1) Each pass-through entity[~~general~~

~~partnership~~] claiming the biodiesel tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

(2) The electronic filing shall contain:

(a) Each partner's, member's, or shareholder's name, address, telephone number, and identification number; and

(b) Each[~~The~~] partner's, member's, or shareholder's distributive share of the tax credit.

(3) Any information required by subsection (2) of this section filed as a separate document attached to the electronic mail message shall be in plain format text or plain ASCII format.

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

~~(a) "Schedule BIO - Application and Credit Certificate of Income Tax Credit Biodiesel (Form 41A720BIO)", October 2005; and~~

~~(b) "Schedule BIO (K-1) - Distributive Share of Approved Biodiesel and/or Blended Biodiesel Tax Credit - Form number 41A720BIO (K-1)", October 2005.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2010, at 10 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 1, 2010. 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: DeVon 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation explains how a biodiesel producer, biodiesel blender, or renewable diesel producer shall file a tax credit claim with the Department of Revenue.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide a biodiesel producer, biodiesel blender, or renewable diesel producer the guidelines and filing requirements when filing a claim for a tax credit with the Department of Revenue.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.425 provides that the Department of Revenue may promulgate administrative regulations for the administration and enforcement of the tax credit provided by KRS 141.422 to 141.424.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide a biodiesel producer, biodiesel blender, or renewable diesel producer all the information necessary to file a tax credit claim with the Department of Revenue.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a renewable diesel producer and changes the tax credit available to a biodiesel blender as a result of changes in Kentucky's law.

(b) The necessity of the amendment to this administrative regulation: Effective August 30, 2007, the nonrefundable credit provided by KRS 141.422 to 141.425 was amended. This amended administrative regulation makes the necessary changes to comply with the current law.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 141.425 authorized the Department of Revenue to promulgate administrative regulations to administer biodiesel credit as provided by KRS 141.422 to 141.424.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the administrative regulation to reflect 2006 and 2007 law changes to the biodiesel tax credit.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All entities filing for a biodiesel tax credit claim as provided by KRS 141.422 to 141.425.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will follow the guidance provided in this administrative regulation when filing a tax credit claim as provided by KRS 141.422 to 141.425.

(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 addition cost to the entities as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will have guidance which will expedite the filing of a tax credit claim for biodiesel, blended biodiesel, and renewable diesel.

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

(a) Initially: There will be a minimal cost for the department to implement this administrative regulation. A small amount of costs associated with notifying taxpayers of this administrative regulation will be incurred.

(b) On a continuing basis: There will be minimal cost for the Department of Revenue on a continuing basis as a result 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 additional funding will be needed 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 will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation as it applies to all entities filing a tax credit claim for biodiesel, blended biodiesel, and renewable diesel.

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 Finance and Administration Cabinet, Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 141.425.

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 small increase in expenditures for the department will occur to notify taxpayers of 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? Unknown

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

(c) How much will it cost to administer this program for the first year? A very small increase in expenditures will occur in the first year of implementation.

(d) How much will it cost to administer this program for subsequent years? Minimal costs for subsequent years.

FINANCE AND ADMINISTRATION CABINET
Kentucky Department of Revenue
Division of Individual Income Tax
(Amendment)

103 KAR 18:110. Withholding methods.

RELATES TO: KRS 141.310, 141.370

STATUTORY AUTHORITY: KRS Chapter 13A, 141.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.370 requires the department[~~cabinet~~] to establish individual income tax withholding tables by administrative regulation. This administrative regulation establishes withholding tables and describes the procedure for supplemental and mechanical withholding. KRS 141.310 requires the department[~~cabinet~~] to revise the tables to compensate for [~~substantial~~] changes in the individual income tax rates[~~deductible federal income tax~~]. These tables reflect the current tax rates[~~repeal of the federal income tax deduction~~].

Section 1. General. The Department of Revenue [~~Cabinet~~] is required by KRS 141.370 to prescribe tables for withholding Kentucky individual income tax from salaries and wages of employees. These tables withhold the tax levied by KRS 141.020 and reflect the standard deduction [~~($650)~~] prescribed by KRS 141.081. The tables referred to in Section 4 of this administrative regulation are hereby prescribed by the Department of Revenue [~~Cabinet~~].

Section 2. Supplemental Withholding. In addition to tax required to be withheld by the tables in Section 4 of this administrative regulation, an employee may authorize his employer to withhold additional Kentucky income tax. An employee may authorize additional withholding by filing an amended Withholding Exemption Certificate (Revenue Form K-4) with his employer. The amended certificate may claim fewer personal exemptions than he is allowed, authorize the employer to withhold a specific amount of additional tax, or both.

Section 3. Mechanical Withholding. The department[~~cabinet~~] provides a computer formula for withholding Kentucky income tax, and any employer with suitable equipment may use the formula in lieu of the tables referred to in Section 4 of this administrative regulation. No other formula or withholding method may be used unless specific written approval is granted by the department[~~cabinet~~].

Section 4. Withholding Tables. Employers shall withhold Kentucky individual income tax from wages and salaries, paid after December 31, 1990, in accordance with the tables filed herein by reference which are obtainable without charge from the Department of Revenue, 501 High Street[~~Cabinet~~], Frankfort, Kentucky 40601. This material incorporated by reference may be inspected [~~and copied~~] at the Department of Revenue's Web site, revenue.ky.gov.[~~Frankfort office of the Revenue Cabinet located on the fourth floor of the Capitol Annex Building. Inspections may be made at this office and the Taxpayer Service Centers listed below between the hours of 8 a.m. and 4:30 p.m. (local time).~~

~~Revenue Cabinet Taxpayer Service Centers~~

~~Ashland~~
~~1422 Winchester Avenue~~
~~P. O. Box 687~~
~~Ashland, Kentucky 41105-0687~~
~~(606) 329-9982~~

~~Bowling Green~~
~~1502 Westen Avenue~~
~~Bowling Green, Kentucky 42102-2040~~
~~(502) 843-5470~~

~~Corbin~~
~~1707 18th Street, Suite 5~~
~~Falls Road Plaza~~
~~P.O. Box 1298~~
~~Corbin, Kentucky 40702-3298~~
~~(606) 528-3322~~

~~Frankfort~~
~~Capitol Annex Building~~
~~Fourth Floor, Room 405~~
~~Frankfort, Kentucky 40620~~
~~(502) 564-4580~~

~~Hazard~~
~~233 Birch Street~~
~~P. O. Box 419~~
~~Hazard, Kentucky 41701-4194~~
~~(606) 439-2388~~

~~Hopkinsville~~
~~Hammond Plaza~~
~~P. O. Box 695~~
~~Hopkinsville, Kentucky 42241-0695~~
~~(502) 887-2521~~

~~Lexington~~
~~301 E. Main Street, Suite 500~~
~~Lexington, Kentucky 40507-1556~~
~~(606) 233-3837~~

~~Louisville~~
~~620 S. Third Street, Suite 102~~
~~Louisville, Kentucky 40202-2402~~
~~(502) 588-4512~~

~~Northern Kentucky~~
~~Kentucky Executive Building~~
~~2055 Dixie Highway, Room 210~~
~~Ft. Mitchell, Kentucky 41011-2648~~
~~(606) 292-6603~~

~~Owensboro~~
~~311 W. Second Street~~
~~P. O. Box 628~~
~~Owensboro, Kentucky 42302-0628~~
~~(502) 686-3301~~

~~Paducah~~
~~555 Jefferson Street~~
~~P. O. Box 2336~~
~~Paducah, Kentucky 42002-2336~~
~~(502) 444-8148~~

~~Pikeville~~
~~1279 N. Mayo Trail~~
~~Pikeville, Kentucky 41501-8230~~
~~(606) 437-4075~~]

THOMAS MILLER, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2010, at 10 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 1, 2010. 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: DeVon 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the withholding tax tables and describes the procedure for supplemental and mechanical withholding.

(b) The necessity of this administrative regulation: This administrative regulation lists the withholding methods used by employers to withhold Kentucky income tax.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By describing each method of withholding allowed, this administrative regulation helps taxpayers determine the correct amount of Kentucky income tax to withhold.

(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 amendment makes minor changes to ensure the accuracy of the regulation.

(b) The necessity of the amendment to this administrative regulation: The necessity is to update the administrative regulation to ensure accuracy.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to enforce all tax laws of this state.

(d) How the amendment will assist in the effective administration of the statutes: It provides guidance to taxpayers on types of withholding methods.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all Kentucky businesses that withhold Kentucky income tax from it's employees.

(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, 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: Taxpayers shall withhold income tax as instructed by the different methods.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Businesses complying with this administrative regulation will not incur additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They are being provided with guidance on the correct withholding methods.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funds needed.

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

(8) State whether or not this administrative regulation 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 was not applied in this administrative regulation. This administrative regulation applies equally to all taxpayers who are required to withhold Kentucky individual income tax.

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 and local governments (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office of Income Taxation, Department of Revenue.

3. Identify each state and federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A and 131.130.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? Nothing

(d) How much will it cost to administer this program for subsequent years? Nothing

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(Amendment)

501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders.

RELATES TO: KRS 17.550-17.991

STATUTORY AUTHORITY: KRS 17.554(1), 17.564

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(1) requires the Sex Offender Risk Assessment Advisory Board to approve providers to conduct court-ordered comprehensive sex offender presentence evaluations and treatment of sex offenders. This administrative regulation establishes approval requirements for providers.

Section 1. Definitions. (1) "Approved provider" is defined by KRS 17.550(3).

(2) "Board" is defined by KRS 17.550(1).

(3) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the factors listed in KRS 17.554(2).

(4) "Corrective action plan" means a plan submitted by the approved provider and accepted by the board or a plan imposed by the board that requires an approved provider to take specific steps to be in compliance with this administrative regulation.

(5) "Sex offender" is defined by KRS 17.550(2).

(6) "Victim" is defined by KRS 17.550(4).

Section 2. Qualifications of Approved Providers. To qualify as an approved provider, an applicant shall, in addition to meeting the requirements of KRS 17.550(3):

(1) Have completed forty (40) hours of specialty training provided or approved by the board under Section 8 of this administrative regulation including the following:

(a) Characteristics and offense patterns of sex offenders;

(b) Treatment modalities used with sex offenders;

(c) Legal and ethical issues in the risk assessment of sex offenders;

(d) Victim's issues, not to exceed two (2) hours of credit against the total requirement;

(e) Issues related to the assessment of juvenile and female sex offenders; and

(f) Use of the appropriate actuarial or evaluation instruments;

(2) Be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status; and

(3) Have a minimum of 250 hours documented experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:

(a) Sixty (60) hours documented experience conducting sex offender evaluations or completion of a practicum as described in Section 6 of this administrative regulation; and

(b) 190 hours documented clinical contact conducting sex offender treatment or completion of a practicum as described in Section 6 of this administrative regulation.

Section 3. Duties. (1) If an approved provider performs a comprehensive sex offender presentence evaluation for a sex offender, he shall not provide treatment for personal financial gain for the sex offender for six (6) months following that assessment.

(2) If an approved provider has provided treatment for a sex offender, he shall not perform a comprehensive sex offender presentence evaluation for personal financial gain for the sex offender for six (6) months following the treatment.

(3) An approved provider shall:

(a) Submit the first four (4) evaluations prepared after becoming an approved provider for review by the board;

(b) Comply with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status; [~~and~~]

(c) Provide the board with the following contact information:

1. Mailing address that may be included on approved provider list sent to courts;

2. Mailing address to be used by board for contact with approved provider if different than address included on approved provider list sent to courts;

3. Phone number that may be included on approved provider list sent to courts;

4. Email address, if approved provider has one, that may be included on approved provider list sent to courts;

(d) Provide the board with changes in the contact information listed in the subsection above within thirty (30) days of a change in information; and

(e) Complete eight (8) hours of continuing education approved or provided by the board by December 31 in each calendar year following the year in which the individual becomes an approved provider.

1. The board may grant an extension of six (6) months in which to complete hours of continuing education upon request for good cause shown. To request an extension, an approved provider shall:

a. Submit a plan detailing how the uncompleted hours will be obtained within the next six (6) months, if a plan to make up uncompleted hours has not been requested or approved by the board for the approved provider for either of the two (2) preceding calendar years;

b. Submit a plan detailing how the next year's eight (8) hours will be obtained within the next calendar year; and

c. State the reasons for the request for extension.

2. The request shall:

a. Be made in writing;

b. Include the number of hours that need to be completed for the calendar year;

c. Include proof of any hours that were completed; and

d. Be postmarked on or before December 31 of the calendar year for which the hours were required.

(4) An approved provider shall not:

(a) Identify himself as an approved provider as credentialed by the Sex Offender Risk Assessment Advisory Board under the provisions of KRS 17.550 through 17.991 when performing an evaluation that is not of an individual convicted of a felony sex crime as defined by KRS 17.500.

(b) Refer to an individual being evaluated or treated as a sex offender if the individual does not meet the definition of a sex offender as established in KRS 17.550.

Section 4. Approval Procedures. (1) The board shall approve an applicant as an approved provider if he meets the applicable qualifications specified in Section 2 of this administrative regulation and is not otherwise disqualified by the provisions of Section 5 of this administrative regulation.

(2) An individual may apply to the board for approval status as an approved provider by submitting:

(a) A written request for approval, which shall include the following:

1. Full name;

2. Business address;

3. Home address;

4. Daytime telephone number;

5. Fax number, if available; and

6. Social Security number;

(b) Documentary evidence of his qualifications; and

(c) Evidence that he has remedied the cause for the denial or revocation, if approval was previously denied or revoked under Section 5 of this administrative regulation.

(3) The board shall determine that an application is incomplete if:

(a) The documentation of qualifications is insufficient to meet the required qualifications in Section 2 of this administrative regulation;

(b) The board is unable to verify the authenticity of the documentation of qualifications; or

(c) Any of the information required in subsection (2) of this section is not submitted.

(4) If the board determines that an application is incomplete, the board shall specify to the applicant additional documentation or information that is required or identify the information that cannot be verified.

(5) The board shall notify the applicant of its intent to approve or deny the application for approval in writing no later than ninety (90) days after receiving a complete application for approval.

(6) Unless approval has been revoked in accordance with Section 5 of this administrative regulation, the board shall renew the approval status of an approved provider upon request if:

(a) He submits documentation of completion of at least eight (8) hours per year of continuing education provided or approved by the board under Section 8 of this administrative regulation; and

(b) The approved provider continues to meet the requirements of this administrative regulation and KRS Chapter 17 for approved provider status.

(7) The board shall maintain a list of approved providers to be submitted to the Administrative Office of the Courts annually.

Section 5. Denial or Revocation of Approval. (1) The board shall deny, suspend or revoke approval if an applicant or an approved provider has:

(a) Been convicted of or pled guilty to a felony criminal offense or a misdemeanor offense against a person;

(b) Had a domestic violence protective order issued against him within the previous five (5) years;

(c) Failed to meet the qualifications for approval set forth in Section 2 of this administrative regulation;

(d) Failed to be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status;

(e) An alcohol or drug abuse problem as defined in KRS 222.005(3);

(f) Falsified any information or documentation, or has concealed a material fact, in his request for approval;

(g) Failed to implement a corrective action plan imposed by the board in accordance with Section 7 of this administrative regulation;

(h) Three (3) or more evaluations which the board finds are below standard upon review;

(i) Failed to comply with the comprehensive sex offender presentence evaluation procedure established in 501 KAR 6:200;

(j) Shown an inability to conduct an evaluation with reasonable skill;

(k) Accepted a gift or favor from a sex offender being assessed, from the family of the sex offender being assessed, or from their agent;

(l) Provided a gift or favor to a sex offender being assessed, to the family of the sex offender being assessed, or to their agent;

(m) Failed to comply with an order of the board; or

(n) Failed to comply with instructions of the board during an investigation.

(2) The board may deny, suspend, or revoke approval if an applicant or an approved provider has:

(a) Been convicted of or pled guilty to any misdemeanor criminal offense that is not against a person;

(b) Had a sanction applied against his mental health professional licensure or certification at any time in the past two (2) years;

(c) Failed to comply with the duties set forth in Section 3 of this administrative regulation;

(d) Less than three (3) evaluations that the board finds are below standard upon review;

(e) Failed to comply with the treatment requirements established in 501 KAR 6:220;

(f) Failed to comply with the evaluation procedure established in 501 KAR 6:200;

(g) Failed to comply with the requirements set forth by the board for the practicum or to successfully complete the practicum, if so required by Section 2 of this administrative regulation;

(h) Identified himself as an approved provider as credentialed by the Sex Offender Risk Assessment Advisory Board under the provisions of KRS 17.550 through 17.991 when performing an evaluation that is not of an individual convicted of a felony sex crime as defined by KRS 17.500; or

(i) Referred to an individual being evaluated or treated as a sex offender if the individual does not meet the definition of sex offender established in KRS 17.550.

(3) If the board intends to deny, suspend or revoke approval, it shall:

(a) Serve a notice of intent to deny, suspend, or revoke approval to the applicant or approved provider; and

(b) Notify the applicant or approved provider of his hearing rights, in accordance with KRS 17.560.

(4) An approved provider who has had his approval revoked shall be ineligible to apply to be an approved provider until the second anniversary of the date his approval was revoked unless his revocation was for failure to obtain the required eight (8) hours of continuing education and the required hours have been obtained.

Section 6. Practicum Requirements. (1) A practicum required by Section 2 of this administrative regulation shall be conducted by an approved provider who shall:

(a) Have a minimum of 2000 hours of experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:

1. 500 hours conducting sex offender evaluations; and

2. 1,500 hours of clinical contact in sex offender treatment;

(b) Be an approved provider in good standing with the board;

(c) Submit a request to conduct a practicum for each participant and be approved by the board to conduct the practicum;

(d) Directly observe the practicum participant's clinical practice in person or through video or audio tape;

(e) Examine and approve all comprehensive sex offender presentence evaluations performed by the practicum participant; and

(f) Give written notice to the board if he determines that the practicum participant's performance does not comply with the provisions of this administrative regulation, 501 KAR 6:200, or 6:220.

(2) To complete a practicum required by this administrative regulation, the participant shall:

(a) Have a minimum of four (4) hours of face-to-face contact with the approved provider conducting the practicum each month, which shall include case discussion, review of reading assignments, skill building, and review of audio or video tape of actual clinical practice;

(b) Obtain a minimum of sixty (60) hours experience conducting sex offender evaluations;

(c) Obtain a minimum of 190 hours of clinical experience with face-to-face contact conducting sex offender treatment;

(d) Participate in the practicum for a minimum of six (6) months; and

(e) Meet the requirements of the practicum within a maximum of eighteen (18) months.

(3) If an applicant has a portion of the minimum hours required to qualify as an approved provider in Section 2(3) of this administrative regulation, he shall participate in the practicum as described in subsections (1) and (2) of this section and may obtain only the hours needed to meet the minimum qualifications in Section 2(3) of this administrative regulation.

Section 7. Monitoring. (1) The board may:

(a) Investigate a formal complaint, verified by affidavit, concerning an approved provider, if the complaint alleges a failure to comply with the provisions of this administrative regulation;

(b) Refer a complaint against an approved provider, which relates to an unethical practice or practice which may be outside the approved provider's scope of practice, to the appropriate Kentucky licensure or certification board; and

(c) Investigate and evaluate an approved provider's adherence to the provisions of this administrative regulation, 501 KAR 6:200, or 502 KAR 6:220, on its own initiative.

(2) The board or staff that assists the board may monitor by the following activities:

(a) Interviewing a sex offender or victim, if consent is given by the sex offender or victim for the interview;

(b) Reviewing evaluation or treatment records maintained by an approved provider on a sex offender;

(c) Direct observation of the evaluation or treatment of a sex offender; or

(d) Interviewing judicial, correctional, law enforcement officials or other individuals that interact with an approved provider in relation to comprehensive sex offender presentence evaluations or treatment of sex offenders.

(3) If an approved provider fails to comply with provisions of this administrative regulation, the board shall notify him in writing of its determination and may:

(a) Require the approved provider to submit a corrective action plan for approval by the board;

(b) Impose a corrective action plan; or

(c) Revoke approval in accordance with Section 5 of this administrative regulation.

(4) If the board requires an approved provider to comply with a corrective action plan, it shall review plan compliance within ninety (90) days.

Section 8. Approval of Specialty Training and Continuing Edu-

cation. (1) Specialty training.

(a) Specialty training, as required in Section 2 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance;

(b) An applicant seeking approval of a specialty training course shall submit to the board the following:

1. A certificate of attendance which shall include the number of hours of training received; or

2.a. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and

b. An agenda from the training seminar that describes topics and length of time spent on each topic.

(c) The board may require the applicant to provide course materials from the training seminar or additional information, if it is unable to adequately determine the nature or relevance of the training provided at the seminar from the materials submitted under subsection (1)(b) of this section.

(2) Continuing education.

(a) Continuing education, as required in Section 3 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance;

(b) An approved provider seeking approval of continuing education hours shall submit to the board the following:

1. A certificate of attendance that shall include the number of hours of education received; or

2.a. If a certificate of attendance is not available, an affidavit that includes the number of hours of education received; and

b. An agenda from the seminar, which describes topics and length of time spent on each topic.

(c) The board may require the applicant to provide course materials from the seminar or additional information, if it is unable to adequately determine the nature or relevance of training provided at the seminar from the materials submitted under subsection (2)(b) of this section.

This is to certify that the Sex Offender Risk Assessment Advisory Board approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a) as reflected by the signature above.

JAMES J. VAN NORT, Chairperson
LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: November 20, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2010 at 9 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 1, 2010. 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: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides the requirements for becoming an approved provider for treating and evaluating sex offenders through the Sex Offender Risk Assessment Advisory Board and the duties required of an approved provider.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 17.550, et.seq.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation states the approval process that the board is required to determine and the duties of the approved provider.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing direction to mental health professionals who desire to be approved providers who are authorized to provide court-ordered assessment and treatment for sex offenders.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds providing contact information to the board as part of the duties for approved providers.

(b) The necessity of the amendment to this administrative regulation: To provide more efficient administration of the regulations regarding approved providers and to conform to the purpose of the statutes.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes give the board regulatory authority concerning the approval process and the providers approved by that process.

(d) How the amendment will assist in the effective administration of the statutes: To provide more efficient administration of the regulations regarding approved providers and to conform to the purpose of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 55 approved providers, the sex offenders that approved providers treat or evaluate, and may potentially affect circuit courts and probation and parole officers, if the names of approved providers change.

(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: Changes in contact information for approved providers will be provided to circuit courts when the list of approved providers is updated and probation and parole officers may obtain the new list of approved providers for their supervision of sex offender.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If an approved provider chooses to mail updated contact information, the approved provider will incur the cost of postage to provide the information to the board, but may also provide the information by email without additional cost. No cost will be incurred by sex offenders or Probation and Parole Officers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The changes will assist the entities by having more up-to-date contact information for approved providers.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment:
None

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation may impact circuit courts, probation and parole officers, if the contact information of approved providers change, and approved providers who are employed by a state or local agency.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 17.550 et seq.

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

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

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

(c) How much will it cost to administer this program for the first year? No new programs are created. 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
(Amendment)

702 KAR 6:100. Appeal procedures for nutrition and health services programs.

RELATES TO: KRS 156.070(5), 156.160(1)(f), 7 C.F.R. 210.18(q), 215.11, 220.13(f)(2), 225.13, 226.6(k), 42 U.S.C. 1761, 1766(e), 1772

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 7 C.F.R. 210.18(q), 225.13

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(5) requires the Kentucky Board of Education to promulgate administrative regulations governing the operation of programs within the Department of Education 7 C.F.R. 210.18(q) and 225.13 require the board to establish an impartial and fair appeals procedure for the federal nutrition program. This administrative regulation establishes the appeals procedure for a sponsor of a federal nutrition program.

Section 1. Actions that May be Appealed. (1) A school food authority that sponsors the National School Lunch Program, the Special Milk Program or the School Breakfast Program may appeal the [~~following adverse actions:~~

~~(a)~~] denial of all or part of a claim for reimbursement arising from administrative or follow-up review activity[~~; or~~

~~(b) Withholding payment arising from administrative or follow-up review activity~~].

(2) A sponsor of the Child and Adult Care Food Program, including an independent center or sponsoring organization on behalf of a facility under its jurisdiction, and responsible principals and responsible individuals, may appeal the following adverse actions:

(a) Denial of a new or renewing institution's application for participation;

(b) Denial of an application submitted by a sponsoring organization on behalf of a facility or site;

(c) Notice of proposed termination of participation of an institution or facility or site;

(d) Suspension of an institution's agreement;

(e) Denial of an institution's application for start-up payments;

(f) Denial of an advance payment;

(g) Denial of all or part of a claim for reimbursement;

(h) Notice of proposed disqualification of a responsible principal or a responsible individual;

(i) Recovery of all or part of an advance in excess of the claim for the applicable period;

(j) Decision by the Department of Education not to forward to Food and Nutrition Service (FNS) an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim;

(k) Demand for the remittance of an overpayment; or

(l) Any other action of the Department of Education affecting the participation of an institution in the program or the institution's claim for reimbursement.

(3) A program sponsor or a food service management company (FSMC) participating in the Summer Food Service Program for Children may appeal the following adverse actions:

(a) Denial of an application for participation;

(b) Denial of a sponsor's request for an advance payment;

(c) Denial of a sponsor's claim for reimbursement;

(d) Refusal of a state agency to forward to FNS an exception request for payment of a late claim or a request for an upward adjustment to a claim;

(e) A claim against a sponsor for remittance of a payment;

(f) Termination of the sponsor or a site;

(g) Denial of a sponsor's application for a site; or

(h) Denial of a food service management company's application for a registration or the revocation of a food service management company's registration.

Section 2. Filing An Appeal. (1) A program sponsor, responsible principal, or responsible individual aggrieved by an adverse action of the Division of Nutrition and Health Services (the "division") may appeal the action by filing a timely request for an appeal. The request shall be filed with the Director, Division of Nutrition and Health Services, Department of Education, 2545 Lawrenceburg Road, Frankfort, Kentucky 40601.

(2) The request shall be in writing and clearly state:

(a) The name and address of the program sponsor;

(b) The name and title of the person who signed the request;

(c) The adverse action being appealed, the basis of the appeal, and the relief or remedy sought;

(d) The date of the letter or other written communication from the division notifying the program sponsor of the proposed adverse action, and the name and title of the division official who signed the letter or communication; and

(e) If a hearing before a hearing officer is desired, the desire for a hearing.

(3)(a) An appellant program sponsor may submit written information in support of its position when it files its appeal and request for a hearing. Except as provided in paragraph (b) of this subsection, it may also submit additional written information to the designated hearing officer up to thirty (30) calendar days after receipt of the division notice of adverse action.

(b) If the appellant program sponsor is the Summer Food Service Program, it may submit additional written information in support of its position up to seven (7) calendar days after filing the appeal and request for a hearing.

Section 3. Appeal Timelines. (1) The request for appeal shall be postmarked or received by the division prior to midnight of the fifteenth calendar day (or tenth working day if the Summer Food Service Program) after receipt of the notice of adverse action. If the 15th day (or tenth working day if the Summer Food Service Program) falls on a Saturday, Sunday, or federal legal holiday, the request shall be timely if it is postmarked or received the next day which is not a Saturday, Sunday, or federal legal holiday.

(2) The division shall acknowledge receipt of the request for an appeal within ten (10) days of its receipt of the request.

(3) Any information on which the division's action was based shall be available for inspection by the institution and the responsible principal and responsible individual from the date of receipt of the request for an appeal.

Section 4. Appeal Procedures. (1) The division shall forward any request for appeal to the Director, Division of Administrative Hearings, Office of the Attorney General. The request for appeal shall be accompanied by a copy of the notice of adverse action sent by the division.

(2) During the appeal process, a program sponsor, responsible principal, responsible individual or food service management company shall:

(a) Self-represent;

(b) Be represented by legal counsel; or

(c) Be represented by another person.

(3) The fair and impartial administrative hearing procedures of KRS Chapter 13B shall apply.

(4) If a hearing is requested:

(a) Except as provided in subsection (7) of this section, the institution, the responsible principal and responsible individual, and the Department of Education shall be provided with at least ten (10) days advance notice of the time and place of the hearing;

(b) If the institution's representative or the responsible principal and responsible individual or their representative fail to appear at the scheduled hearing, the right to a personal appearance before the designated hearing officer shall be waived unless the designated hearing officer agrees to reschedule the hearing; and

(c) A representative of the state agency shall be allowed to attend the hearing to respond to the testimony of the institution and the responsible principal and responsible individual and to answer questions posed by the designated hearing officer.

(5) The designated hearing officer shall make a determination based solely on the information provided by the state agency, the institution, and the responsible principal and responsible individual and based on federal and state laws, administrative regulations, and policies and procedures governing the program.

(6) Except as provided in subsection (7) of this section, within sixty (60) days of the Department of Education's receipt of the request for an appeal, or ten (10) days if the matter under appeal is a suspension of participation, the designated hearing officer shall inform the Department of Education, the institution's executive director and chairman of the board of directors, and the responsible principal and responsible individual of the outcome of the appeal.

(7) If the appellant is the Summer Food Service Program:

(a) The notice of the time and date of the hearing shall be provided at least five (5) days prior to the hearing, with the notice sent by certified mail, return receipt requested;

(b) The hearing shall be held within fourteen (14) days of the date of receipt of the request for an appeal and hearing, but not before the appellant's written documentation is received;

(c) Within five (5) working days after the appellant's hearing, or within five (5) working days after receipt of written documentation if no hearing is to be held, the designated hearing officer shall make a determination based on a full review of the administrative record, and inform the appellant of the outcome of the appeal by certified mail, return receipt requested; and

(d) The Department of Education's action shall remain in effect during the appeal process except if it is an appeal of termination. If it is an appeal of termination:

1. Participating Summer Food Service Program sponsors and sites may continue to operate the program during the appeal, except as provided by subparagraph 3 of this paragraph;

2. Reimbursement shall be paid for meals served during the appeal process if the appeal results in the overturning of the Department of Education's decision; and

3. Continued program operation shall not be allowed if the Department of Education's action is based on imminent danger to the health or welfare of children. If the Summer Food Service Program sponsor or site has been terminated for this reason, the Department of Education shall specify this in its notice of adverse action. Pursuant to 7 C.F.R. 210.18(q)(9), 220.13(f)(2), 225.13(b)(12) and 226.6(k)(5)(vii), the decision of the hearing officer shall be the final administrative determination.

(8) If an application to participate in the program was denied, the determination of the hearing officer shall either sustain the denial or shall direct that the appellant be approved for limited or full participation.

(9) If all or part of a claim for reimbursement, start-up payment, advance payment, or demand for refund of any overpayment was denied, the determination of the hearing officer shall either sustain the action under appeal or specify the amount of the claim for reimbursement, start-up payment, advance payment, or refund of overpayment to be paid.

(10) If an appellant's participation in the program was terminated, the determination of the hearing officer shall either sustain the termination or shall direct that the appellant be permitted to continue participation in the program.

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).

TERRY HOLIDAY, Commissioner
JOSEPH BROTHERS, Chairperson

APPROVED BY AGENCY: December 14, 2009

FILED WITH LRC: December 14, 2009 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 28, 2010, 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 February 1, 2010. 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, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedure for appealing adverse actions taken against sponsors of the Special Milk Program, School Breakfast Program, National School Lunch Program, Child and Adult Care Food Program and Summer Food Service Program for Children.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of the National School Lunch Act of 1946, the Child Nutrition Act of 1966, the Agricultural Risk Protection Act of 2000 and the Grain Standards and Warehouse Improvement Act of 2000, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specifics for the appeal process for sponsors of the programs listed above, including what actions may be appealed, how to file an appeal, and the timelines for appeals, hearings and decisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the specifics for the impartial and fair appeal process for sponsors of the programs listed above.

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

(a) How the amendment will change this existing administrative regulation: It eliminates the ability of the state agency to withhold

payment arising from administrative or follow-up review activity and confirms that appeals are fair and impartial.

(b) The necessity of the amendment to this administrative regulation: The USDA Southeast Regional Office monitoring team recommended these changes during a recent management evaluation in April 2009.

(c) How the amendment conforms to the content of the authorizing statute: It requires the Kentucky Board of Education to establish an impartial and fair appeals procedure for a sponsor of a federal child nutrition program. It clarifies who may appeal, expands the grounds for appeal; clarifies the timelines for filing an appeal; clarifies the right to an administrative hearing; and clarifies the timelines for such hearings, receipt of documentation and response by the hearing official.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the appeal procedure and actions that may be appealed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Sponsors of the programs listed in 1(a) above, including school districts; child care centers; private and parochial schools; local government entities and faith-based organizations.

(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: Sponsors will not have their reimbursement payments withheld if an overclaim is determined due to administrative or follow-up review activities.

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

(a) Initially: There will be no additional costs to the agency to implement this administrative regulation.

(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: Federal funding granted to the state agency that can be used for this purpose.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS.156.029(7), 156.070(5), 156.160(1)(f), 7 C.F.R. 210.18(q), 215.11, 220.13(f)(2), 225.13, 226.6(k), 42 U.S.C. 1761, 1766(e), 1772

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 or expenditure 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:

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

803 KAR 2:300. General.

RELATES TO: 29 C.F.R. 1910.3-1910.7, 1910.9, EO 2009-537

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, EO 2009-537

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1910.3-1910.7 and 1910.9 establish occupational safety and health standards found to be national consensus standards or established federal standards [~~to be enforced by the Department of Workplace Standards in general industry~~]. EO 2009-537, effective June 12, 2009, established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

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

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

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

(6) "Established federal standard" is defined in KRS 338.015(10).

(7) "National consensus standard" is defined in KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

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

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

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

(1) 29 C.F.R. 1910.3-1910.7, revised July 1, 2009[~~2008~~]; and

(2) 1910.9, revised July 1, 2009; and

(3) The revisions to 29 C.F.R 1910.6 as published in the August 11, 2009 Federal Register, Volume 74, Number 153 and confirmed in the November 10, 2009 Federal Register, Volume 74, Number 216.

[~~The addition of section 29 C.F.R. 1910.9 as published in the December 12, 2008 Federal Register, Volume 73, Number 240.~~]

J.R. GRAY, Chairman

APPROVED BY AGENCY: December 3, 2009

FILED WITH LRC: December 10, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on January 26, 2010, at 10:30 a.m. (EDT) at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 1, 2010. 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: Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in EO 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.3 through 1910.9. Section 2 also updates the C.F.R. to July 1, 2009 and establishes the amendments to 29 C.F.R. 1910.6, published in the August 11, 2009 Federal Register, Volume 74, Number 153, and confirmed in the November 10, 2009 Federal Register, Volume 74, Number 216. On November 10, 2009, the Occupational Safety and Health Administration (OSHA) published a direct final rule in the Federal Register, revising its Acetylene Standard for general industry by updating references to standards published by standards developing organizations (SDO) standards. The rulemaking was a continuation of OSHA's ongoing effort to update references to SDO standards used throughout its rules. The Compressed Gas Association (CGA) published several editions of these SDO standards after OSHA adopted them in 1974, and one of these standards (i.e., Compressed Gas Association, Pamphlet G-1.4-1966), is no longer available for purchase from CGA. Therefore, to ensure that employers have access to the latest safety requirements for managing acetylene, the rulemaking adopted the requirements specified in the most recent versions of the SDO standards. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 10, 2009 promulgation date of final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by May 10, 2010. 29 C.F.R. 1952.5 mandates the Kentucky OSH Program also implements this requirement no later than May 10, 2010. Pursuant to KRS 338.051(3), the amendment to this administrative regulation was adopted by the Chairman of the Kentucky OSH Standards Board in order to meet the federal time requirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in EO 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.3 through 1910.7. Section 2 also updates the C.F.R. to July 1, 2009 and establishes the technical amendment to 29 C.F.R. 1910.6, published in the August 11, 2009 Federal Register, Volume 74, Number 153, and confirmed in the November 10, 2009 Federal Register, Volume 74, Number 216. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 10, 2009 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by May 10, 2010. Pursuant to KRS 338.051(3), the amendment to this administrative regulation was adopted by the Chairman of the Kentucky OSH Standards Board in order to meet the federal time requirement.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not have to take any action to comply with this amendment. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment requires no expenditures by entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 10, 2009 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by May 10, 2010. Pursuant to KRS 338.051(3), the amendment to this administrative regulation was adopted by the Chairman of the Kentucky OSH Standards Board in order to meet the federal time requirement.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 10, 2009 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by May 10, 2010. Pursuant to KRS 338.051(3), the amendment to this administrative regulation was adopted by the Chairman of the Kentucky OSH Standards Board in order to meet the federal time requirement.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: Not applicable.

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

803 KAR 2:307. Hazardous materials.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1910.101 - 1910.126

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.101-1910.126 establishes federal requirements relating to hazardous materials. EO 2009-537[~~2008-472~~], effective June 12, 2009[~~16, 2008~~], established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor. This administrative regulation establishes hazardous materials standards to be enforced by the Department of Workplace Standards in general industry.

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

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

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

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

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

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation and the requirements established in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration: 29 C.F.R. 1910.101-1910.126, revised July 1, 2009; and

(2) The revisions to 29 C.F.R. 1910.102 as published in the August 11, 2009 Federal Register, Volume 74, Number 153 and confirmed in the November 10, 2009 Federal Register, Volume 74, Number 216.[~~2008~~]

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

(2) Automotive service station, or service station, shall include[~~means~~] that portion of property where flammable or combust-

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

J.R. GRAY, Chairman

APPROVED BY AGENCY: December 3, 2009

FILED WITH LRC: December 10, 2009 at 19 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 26, 2010, at 10:30 a.m. (EDT) at the Department of Labor, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 1, 2010. 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: Bob Elkins, Safety Standards Specialist, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3579, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bob Elkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in EO 2008-472. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.101 through 1910.126. Section 2 also updates the C.F.R. to July 1, 2009 and establishes the amendments to 29 C.F.R. 1910.102, published in the August 11, 2009 Federal Register, Volume 74, Number 153, and confirmed in the November 10, 2009 Federal Register, Volume 74, Number 216. Section 3 amends a word to meet KRS Chapter 13A considerations. On November 10, 2009, the Occupational Safety and Health Administration (OSHA) published a direct final rule in the Federal Register, revising its Acetylene Standard for general industry by updating references to standards published by standards developing organizations (SDO) standards. The rulemaking was a continuation of OSHA's ongoing effort to update references to SDO standards used throughout its rules. The Compressed Gas Association (CGA) published several editions of these SDO standards after OSHA adopted them in 1974, and one of these standards (i.e., Compressed Gas Association, Pamphlet G-1.4-1966), is no longer available for purchase from CGA. Therefore, to ensure that employers have access to the latest safety requirements for managing acetylene, the rulemaking adopted the requirements specified in the most recent versions of the SDO standards. This amendment will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this amendment likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 10, 2009 promulgation date of final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by May 10, 2010. 29 C.F.R. 1952.5 mandates the Kentucky OSH Program to implement this requirement no later than May 10, 2010. Pursuant to KRS 338.051(3), the amendment to this administrative regulation was adopted by the Chairman of the Kentucky OSH Standards Board in order to meet the federal time requirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation, in Section 1, defines terms not found in the federal standard and redefines terms to reflect the reorganization established in EO 2009-537. Section 2 requires employers in general industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1910.101 through 1910.126. Section 2 also updates the C.F.R. to July 1, 2009 and establishes the technical amendment to 29 C.F.R. 1910.102, published in the August 11, 2009 Federal Register, Volume 74, Number 153, and confirmed in the November 10, 2009 Federal Register, Volume 74, Number 216. Section 3 amends a word to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 10, 2009 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by May 10, 2010. Pursuant to KRS 338.051(3), the amendment to this administrative regulation was adopted by the Chairman of the Kentucky OSH Standards Board in order to meet the federal time requirement.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities identified in question (3) will not have to take any action to comply with this amendment. This amendment removes a number of references to outdated consensus standards that have requirements which duplicate, or are comparable to, the requirements specified by other OSHA rules.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment requires no expenditures by entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program. Improved employee protection is likely to result from promulgation of this amendment because it maintains consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pub.L. 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 10, 2009 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by May 10, 2010. Pursuant to KRS 338.051(3), the amendment to this administrative regulation was adopted by the Chairman of the Kentucky OSH Standards Board in order to meet the federal time requirement.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the November 10, 2009 promulgation date of the final rule. Kentucky does not have an effective alternative to this final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate this federal requirement by May 10, 2010. Pursuant to KRS 338.051(3), the amendment to this administrative regulation was adopted by the Chairman of the Kentucky OSH Standards Board in order to meet the federal time requirement.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, 338.061, Pub.L. 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any subsequent cost.

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

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): There will be no increase or decrease in local government expenditures as a result of this amendment.

Other explanation: Not applicable.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing

815 KAR 20:055. Water heater devices.

RELATES TO: KRS 318.200, EO 2009-535

STATUTORY AUTHORITY: KRS 318.200, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.200 requires, regardless of the class of city or county in which the sale occurs in Kentucky, that all retailers, wholesalers and installers of water heating devices to forward the name and address of the purchaser along with the serial number of the device purchased to the office or to the appropriate agency of county or city government having jurisdiction within thirty (30) days of the purchase. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the requirements for submitting the information to the department[~~office~~].

Section 1. Reporting Requirements. (1) If required by KRS 318.200 to submit information to the department[~~office~~], rather than to a local jurisdiction, [~~manufacturers,~~] wholesalers, retailers, and installing contractors selling water heating devices shall submit to the Department[~~Office~~] of Housing, Buildings and Construction, Division of Plumbing, the name and address of purchasers, including the serial number of the water heater, on Form PLB-94, Water Heater Report Form.

(2) An installing contractor is exempt from the reporting requirements of subsection (1) of this section if they have purchased an installation permit for the water heater. The permit shall serve as the reporting requirement for the Division of Plumbing as re-

quired by KRS 318.200.

Section 2. Incorporation by Reference. (1) Form PLB-94, "Water Heater Report Form", December 2009[~~May 2006~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department[~~Office~~] of Housing, Buildings and Construction, Division of Plumbing, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 430 p.m.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: December 11, 2009

FILED WITH LRC: December 14, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 26, 2010, at 9 a.m., EDT, in the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 19, 2010 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0394 EXT. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for submitting information relating to water heater devices sold in the state of Kentucky.

(b) The necessity of this administrative regulation: KRS 318.200 requires, regardless of the class of city or county in which the sale occurs, that all retailers, wholesalers and installers of water heater devices to forward the name and address of the purchaser along with the serial number of the device purchased to the department or appropriate county or city having jurisdiction within thirty (30) days of purchase.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements and amends the water heater reporting form to be in compliance with the provisions of KRS 318.200.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation updates the Form PLB-94 Water Heater Report Form to comply with statutory authority of KRS 318.200.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update Form PLB-94 Water Heater Report Form to comply with statutory authority granted in KRS 318.200.

(b) The necessity of the amendment to this administrative regulation: This amendment updates the form so that only the statutorily mandated entities are required to submit Form PLB-94 Water Heater Report Form to the Department of Housing, Buildings and Construction, Division of Plumbing.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.200 mandates that that all retailers, wholesalers and installers of water heater devices to forward the name and address of the purchaser along with the serial number of the device purchased to the department or appropriate county or city having jurisdiction within thirty (30) days of purchase. This amendment conforms to the authority statutorily granted and provides an updated form to reflect these reporting entities.

(d) How the amendment will assist in the effective administration of the statutes: The amended Water Heater Device Reporting Form PLB-94 lists those entities required by statute to report sale of water heater devices to the Division of Plumbing. Previously, manufacturers were also included but such are not mandated by statute to report sales.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Housing, Buildings and Construction, Division of Plumbing, wholesalers, retailers and installing contractors who sell water heating devices.

(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: Wholesalers, retailers and installing contractors who sell water heater devices shall submit completed Form PLB-94 with attestation that the information provided is true and correct to the best of the submitting party's knowledge.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment results in no additional or new costs to wholesalers, retailers and installing contractors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits include standardization of the Water Heater Report Form to reflect statutory requirements for reporting by wholesalers, retailers, and installing contractors who sell water heater devices.

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

(a) Initially: There are no additional or new costs associated with the implementation of this amended administrative regulation.

(b) On a continuing basis: There are no additional or new costs associated with implementation of this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing Division of Plumbing funds will be utilized to process Water Heater Report Forms submitted by wholesalers, retailers and installing contractors.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this amended administrative regulation will not necessitate 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 amended administrative regulation does not establish new fees nor will it directly or indirectly increase existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this amended administrative regulation; all wholesalers, retailers and installing contractors who sell water heating devices will be treated equally and required to submit the same form to the Division of Plumbing.

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 Housing, Buildings and Construction, Division of Plumbing will be impacted by this amended administrative regulation.

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

regulation. This administrative regulation is authorized by KRS 318.200.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation establishes no revenues nor creates expenditures.

(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 regulatory amendment will result in no new revenues or expenditures.

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: There is no anticipated fiscal impact from this administrative regulation to state or local government.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Operations Support
(Amendment)

910 KAR 3:030. Traumatic brain injury trust fund operations program.

RELATES TO: KRS Chapter 13B, 45A.075, 45A.080, 189A.050(3)(d)1, 205.900(3), 211.470-211.478, 42.320(2)(j)[~~EO 2004-726~~]

STATUTORY AUTHORITY: KRS 211.474(1), EO 2009-541[~~EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: EO 2009-541 transferred the functions and funds of KRS 189A.050(3)(d)1 to the Department for Aging and Independent Living. KRS 211.474(1) requires the Traumatic Brain Injury Trust Fund Board of Directors to promulgate administrative regulations necessary to carry out the provisions of KRS 211.470 through 211.478. This administrative regulation establishes the Traumatic Brain Injury Trust Fund Operations Program.[~~NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Mental Health and Mental Retardation under the Cabinet for Health and Family Services. KRS 211.474(1) requires the Traumatic Brain Injury Trust Fund Board of Directors to promulgate administrative regulations necessary to carry out the provisions of KRS 211.470 through 211.478. This administrative regulation establishes the operating procedures of the Traumatic Brain Injury Trust Fund Board of Directors, procedures for the selection of a benefit management program, the duties of the benefit management program, the procedure for obtaining Traumatic Brain Injury Trust Fund services, and the procedure for appealing a denial of an application for benefits.~~]

Section 1. Definitions. (1) "Applicant" means a person:

(a) Who applies for the program, including a legal representative on behalf of an applicant;

(b) Who participates in the development of, and agrees to, a service plan for the use of the program; and

(c) For whom a completed service plan is submitted to the program.

(2) "Benefit" means financial assistance provided to a recipient to cover the cost of services approved by the service plan review committee.

(3) "Benefit management program" or "program" means the entity recommended by the board that provides case management services and facilitates distribution of trust fund monies.

(4) "Board" is defined in KRS 211.470(1).

(5) "Cabinet" means the Cabinet for Health and Family Services.

(6) "Case management" means managing a recipient's case for traumatic brain injury services including:

(a) Assisting and developing a service plan for the recipient;

(b) Knowledge of resources for a recipient;

(c) Assisting with accessing local resources for a recipient;

(d) Education of an applicant, recipient, or family member regarding the program and available resources; and

(e) Monitoring of the services received by a recipient as part of an approved service plan.

(7) "Case manager" means a person who provides case management services to applicants and recipients.

(8) "Community residential services" means retraining and rehabilitation of a recipient in a nonemergency situation in a community setting.

(9) "Companion services" means nonmedical supervision and socialization services for the purpose of:

(a) Preventing the need for institutionalization; and

(b) Assisting a recipient in maintaining community placement based upon an approved service plan.

(10) "Department" means the Department for Aging and Independent Living.

(11) "Environmental modification" means a physical adaptation to a recipient's home:

(a) For the purpose of helping a recipient function with greater independence in the recipient's own home; or

(b) Which is necessary to accommodate medical equipment and supplies required for the recipient's welfare.

(12) "Fund" or "trust fund" is defined by KRS 211.470(4).

(13) "Good cause" means a circumstance beyond the control of a recipient that affects the recipient's ability to access an approved benefit, including:

(a) Illness or hospitalization of the individual that is expected to last thirty (30) days;

(b) Death or incapacitation of the primary caregiver; or

(c) Unavailability of a service provider that is expected to last thirty (30) days.

(14) "Integrated environment" means other individuals in a nonresidential setting integrated with those individuals who have a brain injury and in which both are being served to improve community living skills.

(15) "Medical records" means records documenting an applicant's or recipient's traumatic brain injury including:

(a) Hospital records; or

(b) Diagnostic imaging reports as related to KRS 211.470(3);

(16) "Noncrisis behavior programming" means an individually-designated nonemergency service plan intended to increase a recipient's adaptive social behavior.

(17) "Occupational therapist" is defined by KRS 319A.010(3).

(18) "Occupational therapy" means the therapeutic use of self-care, work, and leisure activities to enhance independent functioning or skill development.

(19) "Personal care assistance services" is defined by KRS 205.900(3).

(20) "Prevocational service" means a service designed to develop a prerequisite skill necessary to prepare a recipient for paid or unpaid employment provided beyond other external program resources.

(21) "Psychological and mental health services" means services provided by a mental health professional licensed by the state which are:

(a) Designed to help a recipient to resolve personal issues or interpersonal problems resulting from a traumatic brain injury; or

(b) Provided to a recipient's direct caregiver to preserve the stability of a recipient's community living situation, as part of an approved service plan.

(22) "Recipient" means an applicant or legal representative on behalf of the recipient with an approved service plan who receives a benefit.

(23) "Respite care" means a skilled or unskilled service pro-

vided to a recipient on a short-term basis if there is an absence or need for relief of a recipient's caregiver.

(24) "Service plan" means a document that itemizes the goals, services, equipment, or items which are subject to review by the service plan review committee.

(25) "Service plan review committee" means a committee composed of persons with traumatic brain injuries or their family members and professionals in the field of brain injury as outlined in Section 4(5)(b).

(26) "Specialized medical equipment and supplies" means items which are of direct medical or remedial benefit to a recipient and assist the recipient to maintain community placement.

(27) "Speech-language pathologist" is defined by KRS 334A.020(3).

(28) "Speech and language therapy" means an intervention designed to maximize a recipient's language, pragmatic, and cognitive skills.

(29) "Structured day program services" means a service:

(a) Provided by a certified or licensed entity; and

(b) Performed in a nonresidential setting which is designed to develop and improve a recipient's skills through activities and skill trainings in areas of:

1. Personal well being;

2. Social and community living; and

3. Independent living management.

(30) "Supported employment services" means supervision and training of a recipient in a work site at which persons without disabilities are employed and for a recipient who:

(a) Is unlikely to obtain competitive employment at or above minimum wage; or

(b) Needs ongoing support to perform competitive employment.

(31) "Traumatic brain injury" is defined in KRS 211.470(3).

(32) "Unit" means a billed service calculated in fifteen (15) minute increments.

(33) "Wrap-around service" means a service, equipment, or item, not excluded by KRS 211.474(2)(e), which will enhance a recipient's ability to live in the community, consistent with the recipient's overall service plan.

Section 2. Board Operating Procedures. (1)(a) A board member shall adhere to the bylaws of the board and the confidentiality requirements as specified in KRS 211.474(3).

(b) If a member fails to act in accordance with the bylaws, the chair of the board shall recommend to the governor the dismissal of that member.

(2) A board member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

1. Personal;

2. Professional; or

3. Financial; or

(b) Directly assist another individual, regardless of where the person resides, to apply for benefits from the fund, except a board member:

1. May refer another individual but not directly assist another individual to apply for benefits from the fund; and

2. Shall not refer himself or an eligible family member or receive benefits from the fund at the same time as being a member of the board.

(3) The board shall review a quarterly report of the program's activities in accordance with Section 4(8) of this administrative regulation.

(4) The board shall direct the department to issue a request for proposal for the benefit management program.

Section 3. Department Duties. (1) The department may issue a request for proposal:

(a) If directed by the board; and

(b) In accordance with KRS 45A.080.

(2) The department shall:

(a) Review each proposal properly submitted in accordance with the request for proposal issued;

(b) Determine an entity to operate the program under contract based upon:

1. The boards' recommendation; and

2. Consideration of the:

a. Experience of the entity in the provision of services to individuals with traumatic brain injury;

b. Priority of services to individuals with traumatic brain injury within the entity's overall operation;

c. Expertise of the entity's staff in the provision of services to individuals with traumatic brain injury;

d. Experience in the provision of the entity's case management services;

e. Capacity of the entity to provide case management services to individuals with traumatic brain injury statewide;

f. Experience in and the capacity of the entity to develop community resources for individuals with traumatic brain injury statewide;

g. Capacity of the entity to distribute benefits from the fund to recipients;

h. Capacity of the entity to manage applicant, recipient, benefit, and program evaluation data;

i. Fiscal policies and practices and the financial stability of the entity;

j. Accessibility of the entity to individuals with traumatic brain injury throughout the state;

k. Entity's proposed cost to operate the program; and

l. Entity's proposed procedures for evaluating the program; and

(c) Contract with a qualified entity:

1. At the direction of the board; and

2. Contingent on the availability of funds.

Section 4. Duties of the Program. The program shall:

(1) Establish a toll free telephone number for the purpose of enabling individuals with a traumatic brain injury to apply for benefits from the fund;

(2) Engage in public information activities for the purpose of informing individuals with a traumatic brain injury about the availability of case management services and benefits from the fund and other sources;

(3) Review an applicant's documentation of the applicant's diagnosed brain injury and Kentucky residency to determine eligibility as specified in Section 5 of this administrative regulation;

(4) Assign a case manager within two (2) business days of the determination;

(5) Establish a service plan review committee:

(a) For the purpose of reviewing proposed service plans for approval or denial;

(b) Which shall:

1. Include a minimum of one (1) person with a traumatic brain injury or the guardian or advocate of a person with a traumatic brain injury;

2. Include a minimum of one (1) professional with expertise in the field of traumatic brain injury; and

3. Not have two (2) individuals from the same agency or family serve consecutive terms; and

(c) In which a member shall be limited to serve twelve (12) consecutive months but may be reappointed to the service plan review committee twelve (12) months after the date of the expiration of the member's most recent term of service on the committee;

(6) Accept a request for benefits from the fund;

(7) Distribute benefits to a recipient based upon an approved service plan;

(8) Submit a list of approved or denied service plans in a quarterly report to the department; and

(9) Provide case management services:

(a) To applicants and recipients statewide, including the provision of assistance in accessing a needed support or service, regardless of funding source; and

(b) By the following individuals licensed in Kentucky with two (2) or more years experience working in the brain injury field:

1. A registered nurse;

2. A practical nurse; or

3. An individual who has a bachelor's or higher degree in the human services field and who meets applicable requirements of the individual's particular field including a degree in:

a. Psychology;
b. Sociology;
c. Social work; or
d. Rehabilitation counseling; and
4. That requires the individuals specified in subparagraphs 1 through 3 of this paragraph to have six (6) additional hours of continuing education within the field of traumatic brain injury annually.

Section 5. Eligibility. (1) An applicant shall be eligible for a benefit from the fund:
(a) In accordance with:
1. KRS 211.470(3); and
2. KRS 211.472(2)(a) and (c); and
(b) If the applicant is a legal resident of Kentucky.
(2) A resident of an institution or hospital shall not be eligible for benefits from the fund:
(a) Unless the resident is within two (2) weeks of discharge and the benefits facilitate a discharge to the community; and
(b) If funding is available.
(3) An applicant shall provide medical records of the applicant's traumatic brain injury to the program.
(4) An applicant shall document that the applicant has no other public or private payor source, other than the trust fund, which covers the type of service the applicant is requesting.

Section 6. Procedures for Obtaining a Benefit From the Fund. (1)(a) A benefit for assistance from the fund shall be directly related to an applicant's brain injury or care of the applicant.
(b) A referral for benefits may be made by, or on behalf of, an eligible person by contacting the program in the following manner:
1. Telephone;
2. In person;
3. In writing;
4. Facsimile; or
5. Email.
(2) Upon receipt of referral, the program shall notify the recipient or referral source of the documentation needed to determine eligibility as specified in Section 5 of this administrative regulation.

Section 7. Benefits Available from the Fund. (1) An applicant may apply for one (1) or more benefits from the fund as follows:
(a) Noncrisis behavior programming;
(b) Case management;
(c) Community residential services, which shall include at least the following:
1. Dressing;
2. Oral hygiene;
3. Hair care;
4. Grooming;
5. Bathing;
6. Housekeeping;
7. Laundry;
8. Meal preparation;
9. Shopping;
10. Room and board; or
11. Twenty-four (24) hour supervision of a recipient;
(d) Companion services;
(e) Environmental modification;
(f) Occupational therapy provided by an occupational therapist;
(g) Prevocational service, which shall include at least the following:
1. Assisting a recipient to understand the meaning, value, and demands of work;
2. Assisting a recipient to learn or reestablish skills, attitudes, and behaviors necessary for employment; or
3. Assisting the individual to improve functional capacities;
(h) Psychological and mental health services, which shall include at least the following:
1. Training to improve interpersonal skills;
2. Social skills;
3. Problem-solving skills;
4. Training to remediate a cognitive problem resulting from the traumatic brain injury;
5. Treatment for a substance abuse problem related to the traumatic brain injury;
6. Psychological assessment; and
7. Neuropsychological evaluation;
(i) Respite care in:
1. The recipient's own home;
2. Another personal residence; or
3. Another setting, if approved by the program;
(j) Specialized medical equipment and supplies;
(k) Speech and language therapy provided by a speech-language pathologist which shall include at least the following:
1. Articulation therapy;
2. The design of and instruction in the use of augmentative communication strategies or devices; or
3. Cognitive retraining strategies;
(l) Structured day program services, which shall include at least the following:
1. Direct supervision of the recipient;
2. Specific training to allow a recipient to improve functioning and to reintegrate into the community;
3. Social skills training;
4. Sensory skill development;
5. Motor skill development;
6. Teaching of concepts and skills necessary for the increased independence of the recipient; and
7. Other services to increase:
a. Adaptive behavioral responses; and
b. Community reintegration;
(m) Supported employment services;
(n) Personal care assistance services; or
(o) Wrap-around services, which shall include at least the following:
1. Assistance in transporting a recipient such as to and from a:
a. Medical appointment;
b. Therapy appointment; or
c. Counseling appointment;
2. Dental services by a licensed professional;
3. Vision services by an Optometrist, Ophthalmologist, or Optician;
4. Other destinations in the community as specified in the recipient's service plan;
5. Vehicle modification for accessibility; or
6. A one (1) time expenditure of funds for the payment of the recipient's health insurance expenses, for a period not to exceed three (3) months.
(2) Wrap-around funds shall not be expended for payment of:
(a) Attorney fees;
(b) Court costs or fines assessed as a result of a conviction for a criminal offense;
(c) The cost of incarceration; or
(d) Other court ordered monetary judgments.

Section 8. Case Management Services. (1) Following the program's determination of eligibility, the assigned case manager shall contact a recipient no later than three (3) business days and complete the following responsibilities:
(a) Identify the recipient's needs for service and supports;
(b) Identify potential resources to meet the applicant's need for services and supports;
(c) Assist the applicant in obtaining needed services and supports regardless of funding source;
(d) Determine that the fund is the payor of last resort;
(e) Coordinate, arrange, and document identified service needs of the recipient;
(f) Develop an individualized service plan that shall:
1. Relate to an assessed problem;
2. Identify goals to address the assessed problem;
3. Identify a scope, duration, and unit of service required to address goals;
4. Identify a source of service utilized in this administrative regulation;
5. Include a plan for reassessment of the identified problem; and
6. Be signed by the recipient or recipient's representative and case manager, with a copy provided to the recipient;

(g) Assist in the identification of local resources for individuals with traumatic brain injury;

(h) Document all contacts with the recipient in the recipient's case record including time in and out and mileage, if applicable;

(i) Monitor a recipient's active caseload:

1. Upon available funding, at a minimum one (1):

a. Face-to-face contact at least every other month;

b. Face-to-face at place of residence at least annually; and

c. Phone contact during any month a face-to-face contact does not occur; and

2. Document in the case record each contact made with the recipient including the visit's time in and out and mileage, if applicable; and

(j) Complete a proposed service plan which shall specify:

1. The name, address, and telephone number of the applicant;

2. The Social Security number of the applicant;

3. Medical documentation of the recipient's traumatic brain injury;

4. The applicant's own identification of needed services and supports;

5. The requested benefit from the fund;

6. Documentation of the recipient's lack of a payor source for the requested service including:

a. An explanation of circumstances leading to the need to request funding; and

b. Attempts to find other funding such as:

(i) An agency denial or documentation of a noncovered service by insurance or other entity;

(ii) Department for Medicaid Services denial; or

(iii) Community action programs denial;

7. The relationship of receipt of the benefit to the applicant's ability to live in the community, consistent with the recipient's overall service goals;

8. Establishment of long term planning goals of how the applicant shall maintain stability after the benefit has been received;

9. The signature of the applicant, or the applicant's conservator or guardian, indicating agreement with the terms of the service plan; and

10. The mechanism for distribution of benefits from the fund.

(2) The case manager shall submit the proposed service plan to the service plan review committee for approval.

Section 9. Service Plan Review Committee Duties. (1) The service plan review committee shall:

(a) Verify the trust fund is payor of last resort of the submitted service plan specified in Section 8(1)(g) of this administrative regulation;

(b) Verify eligibility of an applicant or recipient's service plan in accordance with Section 5 of this administrative regulation;

(c) Consider a service plan in the documented order in which it is received;

(d) Review the service plan to determine if:

1. The applicant is eligible for benefits from the fund in accordance with KRS 211.470(3) and 211.474(2) and with Section 5 of this administrative regulation;

2. The benefit requested from the fund meets the requirements of KRS 211.474(2)(d); and

3. The requested services are coordinated by a case manager;

(e) Approve or deny an applicant or recipient's service plan;

(f) Approve the rates of reimbursement for the delivery of services according to a recipient's approved service plan; and

(g) Notify the program of an approved or denied service plan.

(2) The service plan review committee may:

(a) Approve the proposed service plan, for a period not to exceed twelve (12) months;

(b) Amend the proposed service plan; or

(c) Make recommendations to the applicant and the applicant's assigned case manager about other available resources or means to meet the applicant's need for services and supports.

(3) If the applicant disagrees with an amendment by the service plan review committee, the applicant may appeal the decision in accordance with Section 15 of this administrative regulation.

(4) The service plan review committee shall not approve the distribution of a benefit to a recipient in excess of $15,000 within any twelve (12) month period and $60,000 per lifetime pursuant to KRS 211.474(2)(c).

(5) The service plan review committee shall not approve the distribution of benefits to an applicant:

(a) Who does not meet the eligibility requirements established in Section 5 of this administrative regulation;

(b) If the requested benefits are intended for a purpose other than the welfare of the applicant;

(c) If the applicant fails to demonstrate a good faith effort that no other payor source is available to obtain the requested benefit;

(d) If other resources are available to the applicant to substantially meet a reasonable need for which the benefit is requested; or

(e) If the benefit requested is for the purpose of reimbursing the recipient for expenses incurred prior to approval of a service plan by the service plan review committee.

(6) A service plan shall be signed by the director of the program or the director's designee, and the applicant or the applicant's conservator or guardian.

Section 10. Approved Service Plan. (1) A recipient shall receive a copy of an approved service plan from the case manager.

(2) A recipient with an approved service plan may change a service provider within an approved service category if there is no increased cost of the service.

(3) A recipient may make a permitted change by informing the case manager by:

(a) Telephone;

(b) Email;

(c) Facsimile; or

(d) In writing.

(4) The case manager may approve a service provider change in a service plan made without review by the service plan review committee.

(5) Involuntary termination and loss of approved benefits shall be initiated if an individual fails to access the approved benefits as outlined in the service plan within thirty calendar (30) days of notification of approval of the service plan without good cause shown.

(a) The recipient or his legal representative shall have the burden of providing documentation of good cause as to the reason services cannot be accessed within the thirty calendar (30) days, including:

1. A statement signed by the recipient or legal representative;

2. A copy of letters to providers;

3. A copy of letters from providers; and

4. A copy of documentation from physicians or other health care professionals.

(b) Upon receipt of documentation of good cause, the program shall grant one (1) sixty (60) day extension in writing.

Section 11. Provider Duties. (1) Upon notification of an approved service plan, the provider shall:

(a) Accept the rate approved in Section 9(1)(f) of this administrative regulation as payment in full;

(b) Not require additional payment from a recipient; and

(c) Submit an invoice for payment to the program entity ninety (90) days from date of service.

(2) A request for payment submitted after ninety (90) days of the date of service delivery shall not be:

(a) Reimbursed by the Benefit Management Program; or

(b) Billed to the board or recipient.

Section 12. Procedures for Distribution of Benefits from the Fund. (1) The program shall distribute the fund to a service provider, contractor, or retailer for services rendered.

(2) The payment mechanism shall be specified in the service plan.

(3) The service provider or recipient shall provide to the program, on a monthly basis, documentation of the delivery of a service or benefit to a recipient.

(4) A service shall be reimbursed or paid if it is delivered in accordance with a recipient's approved service plan.

(5) An expenditure not included in an approved service plan shall not be paid by the provider, board, or cabinet.

(6) The cost of providing case management services to an

applicant or recipient shall be exempt from the benefit limits established in Section 9(4) of this administrative regulation.

Section 13. Procedures for Placement on a Waiting List. (1) The program may establish a waiting list for benefits from the fund if it determines that no further funding is available during the fiscal year.

(2) The waiting list shall be implemented as follows:

(a) An applicant or recipient shall be placed on the waiting list upon receipt of a referral for assistance from the fund.

(b) The order of placement on the waiting list shall be determined chronologically by date and time of the referral for assistance from the fund.

(c) A written notification of the date and placement on the waiting list shall be mailed to the individual or his legal representative.

(3) The applicant shall be removed from the waiting list if:

(a) After a documented attempt, the program is unable to locate the applicant or his legal representative as specified in Section 14(1)(f) of this administrative regulation;

(b) The applicant secures requested benefit through another resource;

(c) The applicant refuses a benefit in an approved service plan, unless the individual has made a permitted change in accordance with Section 10(2) through (4) of this administrative regulation;

(d) The applicant is deceased; or

(e) The applicant is discharged from the program in accordance with Section 15 of this administrative regulation.

(4) The removal from the waiting list shall not prevent the submission of a new application at a later date for the applicant.

(5) If the applicant is removed from the waiting list, the program shall notify the applicant, or his legal representative in writing within ten (10) business days from the removal.

Section 14. Discharge Criteria. (1) A recipient shall be discharged from the Brain Injury Trust Fund Program if:

(a) The recipient reaches the maximum $60,000 lifetime benefit, except if the board waives the expenditure in accordance with KRS 211.474(2)(c);

(b) A service plan is completed for an approved timeframe and if no other program is needed;

(c) A requested service plan is denied;

(d) The recipient is noncompliant with a plan of care;

(e) The recipient chooses to be terminated from participation in the program;

(f) Contact can not be made with the recipient by the program within three (3) months of last case management contact;

(g) The recipient, caregiver, family or guardian threatens or intimidates a case manager or other program staff;

(h) Services accessed are referred and provided by another agency for continued service, if applicable;

(i) No case management services are provided within six (6) months; or

(j) The recipient is deceased.

(2) If a recipient is appropriately discharged from the program in accordance with subsection (1)(a) through (c), (f), and (h) of this section, the recipient may reapply to the program without submittal of medical records.

Section 15. Procedures for Appealing the Denial of an Application for Benefits from the Fund. (1)(a) The program shall notify the applicant in writing if the service plan review committee does not approve a requested benefit.

(b) Notification shall be made within five (5) business days of the committee's decision.

(2) If an applicant is determined to be ineligible for benefits from the fund because medical records do not provide documentation of a traumatic brain injury, the applicant may submit:

(a) Medical documentation to support the diagnosis of the injury; or

(b) Additional medical opinions about the disability.

(3) The program or the board shall not be liable for the cost of a medical opinion obtained by an applicant.

(4) An applicant who wishes to appeal the denial of benefits shall notify the program, in writing, within thirty (30) days of notification of the denial.

(5) Upon receipt of a written appeal, the program shall encumber funds in the amount requested until final resolution of the appeal.

(6) The program shall acknowledge receipt of a written appeal to the applicant, in writing, within three (3) business days of receipt.

(7) The program shall provide an opportunity for an informal dispute resolution for an applicant or his representative:

(a) To appear before the executive committee board to present facts or concerns about the denial of benefits; and

(b) Within ten (10) business days of receipt of written appeal.

(8) The program shall inform an applicant, in writing, of the decision resulting from the informal dispute resolution within ten (10) business days of the review.

(9) An applicant dissatisfied with the result of the informal dispute resolution may appeal to the Division of Administrative Hearings of the Office of Communications and Administrative Review. The appeal shall be:

(a) In writing;

(b) Made within thirty calendar (30) days of receipt of the decision by the program; and

(c) Submitted to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(10) The department shall request the Division of Administrative Hearings of the Office of Communications and Administrative Review to conduct a hearing pursuant to KRS Chapter 13B.

[~~Section 1. Definitions. (1) "Applicant" means a person who applies for a benefit, participates in the development of and agrees to a service plan for the use of the benefit, and for whom a completed service plan is submitted to the benefit management program.~~

~~(2) "Behavior programming" means an individually-designed strategy intended to increase a recipient's adaptive social behavior.~~

~~(3) "Benefit" means financial assistance provided to a recipient to cover the cost of services approved by the service plan review committee.~~

~~(4) "Benefit management program" or "program" means an entity incorporated to do business in the Commonwealth of Kentucky that contracts with the Cabinet for Health and Family Services, Department for Mental Health and Mental Retardation Services, at the recommendation of the board, to operate the Traumatic Brain Injury Trust Fund Program.~~

~~(5) "Board" is defined in KRS 211.470(1).~~

~~(6) "Cabinet" means the Cabinet for Health and Family Services.~~

~~(7) "Case management" means:~~

~~(a) Assistance to develop a service plan;~~

~~(b) Resource coordination;~~

~~(c) Development of local resources;~~

~~(d) Education of an applicant, recipient, or family member; and~~

~~(e) Monitoring of the services received by a recipient as part of an approved service plan.~~

~~(8) "Case manager" means a person who provides case management services to applicants and recipients.~~

~~(9) "Community residential services" means retraining and rehabilitation of a recipient in a nonemergency situation to perform home care and home management tasks.~~

~~(10) "Companion services" means nonmedical supervision and socialization services designed to prevent institutionalization and to assist a recipient in maintaining community placement.~~

~~(11) "Department" means the Department for Mental Health and Mental Retardation Services or its designee.~~

~~(12) "Environmental modification" means a physical adaptation to a recipient's home to help a recipient function with greater independence in the recipient's own home or which is necessary to accommodate medical equipment and supplies required for the recipient's welfare.~~

~~(13) "Fund" or "trust fund" is defined by KRS 211.470(4).~~

~~(14) "Good cause" means a circumstance beyond the control of a recipient that affects the recipient's ability to access an approved benefit, including:~~

~~(a) Illness or hospitalization of the individual that is expected to last sixty (60) days or less;~~

~~(b) Death or incapacitation of the primary caregiver; or~~

~~(c) Unavailability of a service provider that is expected to last sixty (60) days or less.~~

~~(15) "Occupational therapy" means the therapeutic use of self-care, work, and leisure activities to enhance independent functioning or skill development.~~

~~(16) "Prevocational service" means a service designed to develop a prerequisite skill necessary to prepare a recipient for paid or unpaid employment.~~

~~(17) "Psychological and mental health services" means services designed to help a recipient to resolve personal issues or interpersonal problems resulting from a traumatic brain injury, or services provided to a recipient's direct caregiver to preserve the stability of a recipient's community living situation, as part of an approved service plan.~~

~~(18) "Recipient" means an applicant with an approved service plan who receives a benefit.~~

~~(19) "Respite care" means a service provided to a recipient on a short-term basis if there is an absence or need for relief of a recipient's caregiver.~~

~~(20) "Service plan" means a document that itemizes the goals, services, equipment, or items which have been approved for payment by the service plan review committee.~~

~~(21) "Service plan review committee" means a committee composed of persons with traumatic brain injuries or their family members and professionals in the field of brain injury that has the responsibility to review each applicant's proposed service plan for the purpose of approving or denying approval of the requested benefits.~~

~~(22) "Specialized medical equipment and supplies" means items which are of direct medical or remedial benefit to a recipient and which help a recipient to maintain community placement.~~

~~(23) "Speech and language therapy" means an intervention designed to maximize a recipient's language, pragmatic, and cognitive skills.~~

~~(24) "Structured day program services" means a service performed in a nonresidential setting which is designed to develop and improve a recipient's community living skills.~~

~~(25) "Supported employment services" means supervision and training of a recipient in a work site at which persons without disabilities are employed, for a recipient who is unlikely to obtain competitive employment at or above minimum wage and who needs ongoing support to perform competitive employment.~~

~~(26) "Traumatic brain injury" is defined in KRS 211.470(3).~~

~~(27) "Wrap-around service" means a service, equipment, or item, not excluded by KRS 211.474(2)(e), which will enhance a recipient's ability to live in the community, consistent with the recipient's overall service goals.~~

~~Section 2. Board Operating Procedures. (1) A board member shall adhere to:~~

~~(a) The bylaws of the board; and~~

~~(b) The confidentiality requirements as specified in KRS 211.474(3).~~

~~(2) If a member fails to act in accordance with the bylaws, the chair of the board shall recommend to the governor the dismissal of that member.~~

~~(3) A board member shall not:~~

~~(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:~~

~~1. Personal;~~

~~2. Professional; or~~

~~3. Financial;~~

~~(b) Be present during a meeting at which time an applicant's request is discussed or voted on, if the member has a conflict of interest identified in paragraph (a) of this subsection; or~~

~~(c) Assist another individual, regardless of where the person resides, to complete an application for benefits from the fund, except a board member may so assist for himself, if eligible, or for an eligible family member.~~

~~Section 3. Procedures for Selection of the Program. (1) The board shall issue a request for proposal in accordance with KRS 45A.080.~~

~~(2) The board shall review each proposal properly submitted in accordance with the request for proposal issued and shall recommend to the department an entity to operate the program under contract with the department.~~

~~(3) The board shall recommend an entity based upon consideration of:~~

~~(a) The experience of the entity in the provision of services to individuals with traumatic brain injury;~~

~~(b) The priority of services to individuals with traumatic brain injury within the entity's overall operation;~~

~~(c) The expertise of the entity's staff in the provision of services to individuals with traumatic brain injury;~~

~~(d) The experience in the provision of case management services;~~

~~(e) The capacity of the entity to provide case management services to individuals with traumatic brain injury throughout the state;~~

~~(f) The experience in and the capacity of the entity to develop community resources for individuals with traumatic brain injury throughout the state;~~

~~(g) The capacity of the entity to distribute benefits from the fund to recipients;~~

~~(h) The capacity to manage applicant, recipient, benefit, and program evaluation data;~~

~~(i) The fiscal policies and practices and the financial stability of the entity;~~

~~(j) The accessibility of the entity to individuals with traumatic brain injury throughout the state;~~

~~(k) The entity's proposed cost to operate the program; and~~

~~(l) The entity's proposed procedures for evaluating the program.~~

~~(4) The department shall contract with the entity recommended by the board contingent on the availability of funds, unless the department determines that:~~

~~(a) The board failed to adhere to the requirements of subsection (3) of this section; or~~

~~(b) That a board member has violated a requirement of Section 2(3) of this administrative regulation.~~

~~(5) The contract between the department and the entity recommended by the board shall be in accordance with KRS 45A.075.~~

~~Section 4. Duties of the Program. (1) The program shall:~~

~~(a) Establish a toll free telephone number for the purpose of enabling individuals with traumatic brain injury to apply for benefits from the fund;~~

~~(b) Engage in public information activities for the purpose of informing individuals with traumatic brain injury about the availability of case management services and benefits from the fund and other sources;~~

~~(c) Provide case management services to applicants and recipients statewide, including the provision of assistance in accessing a needed support or service, regardless of funding source;~~

~~(d) Accept applications for benefits from the fund and distribute benefits to recipients based upon an approved service plan;~~

~~(e) Establish a service plan review committee for the purpose of reviewing proposed service plans for approval;~~

~~(f) Approve the rates of reimbursement for the services of a provider for the delivery of services to a recipient as a part of an approved service plan; and~~

~~(g) Assist in the development of local resources for individuals with traumatic brain injury.~~

~~(2) The provider of a service shall accept the rate approved in accordance with subsection (1)(f) of this section as payment in full, and shall not require additional payment from a recipient.~~

~~(3) The provider of an approved service shall submit an invoice for payment to the Benefit Management Program within twelve (12) months of the date of service delivery. A request for payment submitted after twelve (12) months of the date of service delivery shall not be reimbursed by the Benefit Management Program and shall not be the financial responsibility of the board or the recipient.~~

~~Section 5. Service Plan Review Committee Requirements. (1) The program shall establish a benefit review committee which shall include a minimum of:~~

~~(a) One (1) person with a brain injury or the guardian or advo-~~

~~cate of a person with a brain injury; and~~

~~(b) One (1) professional with expertise in the field of traumatic brain injury.~~

~~(2) Membership on the service plan review committee shall be limited to twelve (12) consecutive months.~~

~~(3) A person who has served the term specified in subsection (2) of this section may be reappointed to the service plan review committee six (6) months after the date of the expiration of the person's most recent term of service on the committee.~~

~~Section 6. Eligibility. (1) An applicant shall be eligible for a benefit from the fund in accordance with:~~

~~(a) KRS 211.470(3); and~~

~~(b) KRS 211.474(2)(a) and (c).~~

~~(2) A resident of an institution or hospital shall not be eligible for benefits from the fund.~~

~~(3) An applicant shall provide medical documentation of the applicant's traumatic brain injury, including:~~

~~(a) A signed document from the applicant's physician stating that the applicant has a brain injury; or~~

~~(b) A copy of a medical report which documents that the applicant has a traumatic brain injury.~~

~~(4) An applicant shall document that the applicant has no funding source, other than the trust fund, which covers the type of service the applicant is requesting.~~

~~Section 7. Benefits Available from the Fund. (1) Except as provided in subsection (2), (3), or (4) of this section, an applicant may apply for one (1) or more benefits from the fund, as follows:~~

~~(a) Behavior programming;~~

~~(b) Case management;~~

~~(c) Community residential services, which may include:~~

~~1. Dressing;~~

~~2. Oral hygiene;~~

~~3. Hair care;~~

~~4. Grooming;~~

~~5. Bathing;~~

~~6. Housekeeping;~~

~~7. Laundry;~~

~~8. Meal preparation;~~

~~9. Shopping;~~

~~10. The cost of room and board; or~~

~~11. Twenty-four (24) hour supervision of a recipient;~~

~~(d) Companion services;~~

~~(e) Environmental modification;~~

~~(f) Occupational therapy;~~

~~(g) Prevocational service, which may include:~~

~~1. Assisting a recipient to understand the meaning, value, and demands of work;~~

~~2. Assisting a recipient to learn or reestablish skills, attitudes, and behaviors necessary for employment; or~~

~~3. Assisting the individual to improve functional capacities;~~

~~(h) Psychological and mental health services, which may include:~~

~~1. Training to improve interpersonal skills;~~

~~2. Social skills;~~

~~3. Problem-solving skills;~~

~~4. Training to remediate a cognitive problem resulting from the brain injury;~~

~~5. Treatment for a substance abuse problem related to the brain injury;~~

~~6. Psychological assessment; and~~

~~7. Neuropsychological evaluation;~~

~~(i) Respite care, which may be provided in:~~

~~1. The recipient's own home;~~

~~2. A residence; or~~

~~3. Another setting, if approved by the program;~~

~~(j) Specialized medical equipment and supplies;~~

~~(k) Speech and language therapy, which may include:~~

~~1. Articulation therapy;~~

~~2. The design of and instruction in the use of augmentative communication strategies or devices; or~~

~~3. Cognitive retraining strategies;~~

~~(l) Structured day program services, which may include:~~

~~1. Supervision;~~

~~2. Specific training to allow a recipient to improve functioning and to reintegrate into the community;~~

~~3. Social skills training;~~

~~4. Sensory skill development;~~

~~5. Motor skill development;~~

~~6. Teaching of concepts and skills necessary for the increased independence of the recipient; and~~

~~7. Other services to increase:~~

~~a. Adaptive behavioral responses; and~~

~~b. Community reintegration;~~

~~(m) Supported employment services; or~~

~~(n) Wrap-around service, which may include one (1) expenditure of funds for:~~

~~1. The repair, maintenance, or purchase of a vehicle, not to exceed $3,000 if the recipient:~~

~~(a) Has a valid Kentucky driver's license;~~

~~(b) Has the financial ability to obtain and maintain insurance on the vehicle according to Kentucky law; and~~

~~(c) Has no other available public or private transportation to substantially meet a reasonable need for which the vehicle is requested;~~

~~2. The payment of a recipient's rent, mortgage, or utility expenses, for a period not to exceed three (3) months;~~

~~3. The payment of the recipient's health insurance expenses, for a period not to exceed three (3) months; and~~

~~4. The purchase of a computer and related equipment and software for use by the recipient not to exceed $1,500, if an evaluation results in a finding that the recipient has the functional ability to operate the computer, related equipment, and software;~~

~~(2) The cost of an evaluation to determine a recipient's ability to operate a motor vehicle or a computer, related equipment, or software shall be included in the recipient's benefit.~~

~~(3) A recipient who receives a benefit specified in subsection (1)(n) of this section shall not be eligible to apply for an additional expenditure of funds for the same purpose.~~

~~(4) Wrap around funds shall not be expended for payment of:~~

~~(a) Attorney fees;~~

~~(b)1. Court costs;~~

~~2. Fines assessed as a result of a conviction for a criminal offense;~~

~~(d) The cost of incarceration; or~~

~~(e) Other court ordered monetary judgments.~~

~~Section 8. Procedures for Obtaining a Benefit from the Fund. (1) A referral for assistance from the fund may be made by, or on behalf of, an eligible person by contacting the program by:~~

~~(a) Telephone;~~

~~(b) In person; or~~

~~(c) In writing.~~

~~(2) Upon receipt of a referral, the program shall assign a case manager to assist the applicant. The case manager shall:~~

~~(a) Assess the applicant's eligibility for a benefit;~~

~~(b) Identify the applicant's needs for service and supports;~~

~~(c) Identify potential resources to meet the applicant's need for services and supports;~~

~~(d) Assist the applicant in obtaining needed services and supports regardless of funding source;~~

~~(e) Determine that the fund is the payor of last resort; and~~

~~(f) Complete a proposed service plan which shall specify:~~

~~1. The name, address, and telephone number of the applicant;~~

~~2. The Social Security number of the applicant;~~

~~3. Medical documentation of the applicant's traumatic brain injury;~~

~~4. Documentation of the applicant's lack of a payor source for the requested service;~~

~~5. The requested benefit from the fund;~~

~~6. The relationship of receipt of the benefit to the applicant's ability to live in the community, consistent with the recipient's overall service goals;~~

~~7. The applicant's own identification of needed services and supports;~~

~~8. The mechanism for distribution of benefits from the fund; and~~

~~9. The signature of the applicant, or the applicant's conservator or guardian, indicating agreement with the terms of the service plan.~~

~~(3) The case manager shall submit the proposed service plan to the service plan review committee for approval.~~

~~(4) The service plan review committee shall review the proposed service plan to determine if:~~

~~(a) The applicant is eligible for benefits from the fund in accordance with KRS 211.470(3) and 211.474(2) and with Section 6 of this administrative regulation;~~

~~(b) The benefit requested from the fund meets the requirements of KRS 211.474(2)(d); and~~

~~(c) The requested services are appropriately coordinated by a case manager.~~

~~(5) The service plan review committee may:~~

~~(a) Approve the proposed service plan, for a period not to exceed twelve (12) months; or~~

~~(b) Amend the proposed service plan; and~~

~~(c) Make recommendations to the applicant and the applicant's assigned case manager about other available resources or means to meet the applicant's need for services and supports.~~

~~(6) If the applicant disagrees with an amendment by the service plan review committee, the applicant may appeal the decision in accordance with Section 12 of this administrative regulation.~~

~~(7) The service plan review committee shall not approve the distribution of a benefit to a recipient in excess of $15,000 within any twelve (12) month period and $60,000 per lifetime, except in accordance with Section 9(9) and 9(10) of this administrative regulation.~~

~~(8) The service plan review committee shall not approve the distribution of benefits to an applicant:~~

~~(a) Who does not meet the eligibility requirements established in Section 6(1) and (2) of this administrative regulation;~~

~~(b) If the requested benefits are intended for a person other than the applicant;~~

~~(c) If the applicant fails to demonstrate that no other payor source is available to obtain the requested benefit;~~

~~(d) If other resources are available to the applicant to substantially meet a reasonable need for which the benefit is requested; or~~

~~(e) If the benefit requested is for the purpose of reimbursing the recipient for expenses incurred prior to approval of a service plan by the service plan review committee, unless the request meets the criteria established in Section 9(4) of this administrative regulation.~~

~~(9) A service plan shall be signed by the director of the program or the director's designee, and the applicant or the applicant's conservator or guardian.~~

~~(10) The service plan review committee shall consider a service plan in the order in which it is received.~~

~~(11) A recipient shall receive a copy of the approved service plan from the case manager.~~

~~(12) The service plan review committee shall submit a list of approved service plans to the board.~~

~~(13) A recipient with an approved service plan may change a service provider within an approved service category if there is no increased cost of the service.~~

~~(14) A recipient may make a permitted change by informing the case manager by telephone or in writing.~~

~~(15) The case manager may approve a change in service plan made in accordance with subsections (13) and (14) of this section without review by the service plan review committee.~~

~~(16) Involuntary termination and loss of approved benefits shall be initiated if an individual fails to access the approved benefits as outlined in the service plan within ninety (90) days of notification of approval of the service plan without good cause shown.~~

~~(a) The recipient or his legal representative shall have the burden of providing documentation of good cause as to the reason services cannot be accessed within the ninety (90) days, including:~~

~~1. A statement signed by the recipient or legal representative;~~

~~2. A copy of letters to providers;~~

~~3. A copy of letters from providers; and~~

~~4. A copy of documentation from physicians or other health care professionals.~~

~~(b) Upon receipt of documentation of good cause, the program shall grant one (1) sixty (60) day extension in writing.~~

~~Section 9. Procedures for Obtaining a Benefit in Exceptional Circumstances. (1) A request for emergency assistance from the fund may be made by or on behalf of an eligible applicant by contacting the program by telephone or in writing.~~

~~(2) A written service plan shall not be required when a request for emergency assistance is made.~~

~~(3) The program shall convene a meeting of the service plan review committee to consider a request for emergency assistance within two (2) working days from receipt of the request.~~

~~(4) The service plan review committee may approve a request for emergency assistance under the following circumstances:~~

~~(a) The loss of the eligible applicant's or recipient's caregiver;~~

~~(b) The imminent loss of the eligible applicant's or recipient's home or community placement;~~

~~(c) The loss of the eligible applicant's or recipient's service provider, if that loss results in an immediate threat to the health, welfare, or safety of the eligible applicant or recipient; or~~

~~(d) An immediate threat to the health, welfare, or safety of the eligible applicant or recipient.~~

~~(5) An immediate family member may be paid from the fund to provide care to a recipient in an emergency for a period not to exceed sixty (60) days in any twelve (12) month period. Payment to the immediate family member in this circumstance shall not exceed:~~

~~(a) $1,000 in a thirty (30) day period; or~~

~~(b) $2,000 for a sixty (60) day period.~~

~~(6) In an emergency, the service plan review committee may approve the distribution of benefits from the fund not to exceed $2,000.~~

~~(7) If benefits are distributed from the fund in an emergency, the program shall assign a case manager to:~~

~~(a) Develop a written service plan which meets the requirements of Section (8)(2)(f) of this administrative regulation; and~~

~~(b) Submit a written service plan to the service plan review committee no later than three (3) working days after the decision of the service plan review committee to approve an emergency request.~~

~~(8) The service plan review committee shall review the emergency service plan no later than two (2) working days after receipt.~~

~~(9) The board may waive the limits on expenditures required by Section 8(7) of this administrative regulation in an emergency, subject to the availability of funds, if it determines that:~~

~~(a) The benefit from the fund is essential to ensure the immediate health, welfare, and safety of a recipient;~~

~~(b) The fund request is included in a service plan approved by the service plan review committee; and~~

~~(c) The approved service plan includes a provision for other funding after the exception to the limit expires.~~

~~(10) A recipient shall be eligible for only one (1) lifetime exception to the benefit limit, not to exceed $7,500, and shall not be eligible to apply for an additional waiver after one (1) has been approved.~~

~~(11) The service plan review committee shall not approve the distribution of benefits in violation of KRS 211.474(2)(c).~~

~~Section 10. Procedures for Distribution of Benefits from the Fund. (1) Distribution from the fund may be made to:~~

~~(a) A recipient, to enable the recipient to purchase a service;~~

~~(b) The guardian or conservator of a recipient, to purchase a service;~~

~~(c) A local service provider; or~~

~~(d) To a combination of the individuals specified in paragraphs (a), (b) and (c) of this subsection.~~

~~(2) The payment mechanism shall be specified in the service plan.~~

~~(3) A recipient shall be liable to the service provider for the payment of a service or other benefit delivered to the recipient under an approved service plan unless funds are distributed to a service provider in accordance with subsection (1)(c) of this section. An unapproved expenditure or cost remaining unpaid shall be the responsibility of the recipient and shall not be paid by the program or the board.~~

~~(4) The service provider or recipient shall provide to the program, on a monthly basis, documentation of the delivery of a service or benefit to a recipient.~~

~~(5) A service shall be reimbursed or paid if it is delivered in accordance with a recipient's approved service plan.~~

~~(6) A service shall not be reimbursed in the absence of an approved service plan, except in accordance with Section 9 (6) and (7) of this administrative regulation.~~

~~(7) An expenditure not included in an approved service plan shall not be paid by the program, the board, the department, or the cabinet.~~

~~(8) The cost of providing case management services to an applicant or recipient shall be exempt from the benefit limits established in Section 8(7) of this administrative regulation.~~

~~Section 11. Procedures for Placement on a Waiting List. The board may establish a waiting list for benefits from the fund if it determines that no further funding is available during the fiscal year. The waiting list shall be implemented in accordance with this section:~~

~~(1) The benefit management program shall implement and maintain the waiting list at the request of the board.~~

~~(2) An applicant or recipient shall be placed on the waiting list upon receipt of a referral for assistance from the fund.~~

~~(3) The order of placement on the waiting list shall be determined chronologically by date of the referral for assistance from the fund unless the applicant or recipient meets the criteria established in Section 9(4) of this administrative regulation.~~

~~(4) Emergency referrals for assistance from the fund shall be considered chronologically by date of the emergency referral.~~

~~(5) Emergency referrals for assistance shall be considered prior to consideration of all other referrals for assistance from the fund.~~

~~(a) If multiple referrals for assistance from the fund are received on the same arrival date, each referral shall be placed chronologically on the waiting list according to the time of receipt; and~~

~~(b) A written notification of the date and placement on the waiting list shall be mailed to the individual or his legal representative.~~

~~(6) The criteria for removal from the waiting list shall be:~~

~~(a) After a documented attempt, the benefit management program is unable to locate the individual or his legal representative;~~

~~(b) The individual refuses a benefit in an approved service plan, unless the individual has made a permitted change in accordance with Section 8(13) through (15) of this administrative regulation; or~~

~~(c) The individual is deceased.~~

~~(7) The removal from the waiting list shall not prevent the submission of a new application at a later date for the applicant or recipient.~~

~~(8) If the applicant or recipient is removed from the waiting list, the benefit management program shall notify the applicant or recipient, or his legal representative in writing.~~

~~Section 12. Procedures for Appealing the Denial of an Application for Benefits from the Fund. (1) The program shall notify the applicant in writing if the service plan review committee does not approve a requested benefit. Notification shall be made within five (5) working days of the committee's decision.~~

~~(2) If an applicant is determined to be ineligible for benefits from the fund because medical records do not provide documentation of a traumatic brain injury, the applicant may submit additional medical data, medical records, or medical documentation to support the diagnosis of the injury, or additional medical opinions about the disability.~~

~~(3) The program may obtain an independent medical opinion at its own expense.~~

~~(4) The board may obtain an independent medical opinion at its own expense.~~

~~(5) The program or the board shall not be liable for the cost of a second opinion obtained by an applicant, except in accordance with subsections (3) and (4) of this section.~~

~~(6) An applicant who wishes to appeal the denial of benefits shall notify the program, in writing, within thirty (30) days of notification of the denial.~~

~~(7) Upon receipt of a written appeal, the program shall encumber funds in the amount requested until final resolution of the appeal.~~

~~(8) The program shall acknowledge receipt of a written appeal, in writing, within three (3) working days of receipt and shall perform a review of the denial within ten (10) working days of receipt.~~

~~(9) The program shall assure that the staff members who review the denial have not been involved in the original decision regarding an applicant's eligibility or request for benefits.~~

~~(10) The program shall provide an opportunity for an applicant or his representative to appear before a representative of the program to present facts or concerns about the denial of benefits.~~

~~(11) The program shall inform an applicant, in writing, of the decision resulting from the review of the denial within ten (10) working days of the decision.~~

~~(12) An applicant dissatisfied with the result of the appeal to the program may appeal to the board. An appeal to the board shall be:~~

~~(a) In writing;~~

~~(b) Made within thirty (30) days of receipt of the decision by the program; and~~

~~(c) Submitted to the Brain Injury Services Branch of the department.~~

~~(13) The Brain Injury Services Branch shall acknowledge receipt of a written appeal, in writing, and shall notify the chair of the board, in writing, of the appeal within five (5) working days after receipt of the appeal.~~

~~(14) The board shall direct the Brain Injury Services Branch to request the Division of Administrative Hearings of the Office of Legislative and Public Affairs to conduct a hearing pursuant to KRS Chapter 13B.~~

~~(15) The case manager and other representatives of the program shall be available to testify and shall be subject to cross-examination concerning the basis of the decision on an appeal.~~

~~(16) The parties may submit exceptions to the recommended order of the hearing officer to the Brain Injury Services Branch.~~

~~(17) The board shall review the recommended order and any exceptions filed and shall render a final decision in accordance with KRS 13B.120. The final order shall make clear reference to the availability of judicial review pursuant to KRS 13B.140 and 13B.150.~~]

DEBORAH ANDERSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 11, 2009

FILED WITH LRC: December 14, 2009 at noon

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2010, at 9 a.m. in the Health Services Building, Third Floor, Meeting Room B, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 2010, 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business February 1, 2010. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40602, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge 502-564-6930 x 3432

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Traumatic Brain Injury Trust Fund

Operations Program.

(b) The necessity of this administrative regulation: KRS 211.474(1) requires the Traumatic Brain Injury Trust Fund Board of Directors to promulgate administrative regulations necessary to carry out the provisions of KRS 211.470 through 211.478.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the operating procedures of the Traumatic Brain Injury Trust Fund Board of Directors, procedures for the selection of a benefit management program, the duties of the benefit management program, the procedure for obtaining Traumatic Brain Injury Trust Fund services, and the procedure for appealing a denial of an application for benefits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by serving as many individuals with traumatic brain injuries as possible with services provided in KRS 211.474(2)(d).

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies responsibilities of the Trust Fund Board, responsibilities of the Benefit Management Program, qualifications of a case manager, eligibility of an applicant, qualifications of Service Review Committee Members, the appeal process, benefits available within the Trust Fund Program and waiting list criteria; and establishes a section on case management services, a section of provider services, and responsibility criteria for discharge from the Trust Fund Program.

(b) The necessity of the amendment to this administrative regulation: The public will have a better understanding and expectation of the provisions for services provided to individuals with traumatic brain injuries.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 211.474(1) by clarifying the requirements that are necessary for the provision of services to individuals with traumatic brain injuries.

(d) How the amendment will assist in the effective administration of the statutes: Assistance in the effective administration of the statutes will be through clarification of the requirements for services provided to individuals with traumatic brain injuries.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky has approximately 22,000 individuals who sustain brain injuries annually in Kentucky and this Trust Fund regulation enables services to be provided to individuals who have no other assistance available. The Department for Aging and Independent Living (DAIL) will oversee the administration of the program; the Department for Medicaid Services, Department for Behavioral Health, Developmental and Intellectual Disabilities; Department for Community Based Services, Department of Vocational Rehabilitation and Protection Advocacy will have clients that may require services from the Trust Fund; other community providers including rehabilitation providers, residential treatment providers; structured day providers; etc will also be affected across the Commonwealth.

(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 individual with a traumatic brain injury will provide documentation of their brain injury in order to access the program; DAIL will administer the program under the direction of the Trust Fund Board; the other departments and entities will make or receive referrals from the program to provide a service.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost. Costs are paid by the revenues from KRS 189A.050 and court cost pursuant to KRS 211.476.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Eligible individuals with a traumatic brain injury accessing the program will receive case management and benefits for services; the departments will meet the needs of clients with limited brain injury services; the service providers will be reimbursed for specific traumatic brain injury services rendered.

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

(a) Initially: No additional costs. The program is administered with revenues from DUI fines pursuant to KRS 189A.050(3)(d)1., and court costs pursuant to KRS 42.320(2)(j).

(b) On a continuing basis: No additional costs. The program is administered with revenues from DUI fines pursuant to KRS 189A.050(3)(d)1., and court costs pursuant to KRS 42.320(2)(j).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Annually five and one-half percent (5.5%) of each court cost, up to two million seven hundred fifty thousand dollars ($2,750,000) is paid into the traumatic brain injury trust fund created under KRS 211.476 pursuant to KRS 42.320(2)(j), and eight percent (8%) of DUI fines pursuant to KRS 189A.050(3)(d)1.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established in this administrative regulation

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Aging and Independent Living, Department for Medicaid Services, and Department for Behavioral Health, Developmental and Intellectual Disabilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.474(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 5.5% of each court cost, up to $2,750,000 is paid into the traumatic brain injury trust fund created under KRS 211.476 pursuant to KRS 42.320(2)(j), and 8% of DUI fines pursuant to KRS 189A.050(3)(d)1.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? 5.5% of each court cost, up to $2,750,000 is paid into the traumatic brain injury trust fund created under KRS 211.476 pursuant to KRS 42.320(2)(j), and 8% of DUI fines pursuant to KRS 189A.050(3)(d)1.

(c) How much will it cost to administer this program for the first year? No additional costs. The program is administered with revenues from DUI fines pursuant to KRS 189A.050(3)(d)1 and court cost pursuant KRS 42.320(2)(j).

(d) How much will it cost to administer this program for subsequent years? No additional costs. The program is administered with revenues from DUI fines pursuant to KRS 189A.050(3)(d)1 and court cost pursuant KRS 42.320(2)(j).

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Income Support
Child Support Enforcement
(Amendment)

921 KAR 1:380. Child Support Enforcement Program application and interstate process.

RELATES TO: KRS 205.705, 205.710-205.800, 205.992, 213.046(4), 403.211, 405.430(5), 405.520, 405.467, 406.021, 406.025, 407.5101-407.5902, 610.170, 45 C.F.R. 301.1, 302.30, 302.31, [~~303.69,~~] 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.15, 303.30-303.31, 303.69, 303.70, 42 U.S.C. 651-654, 657, 663, 666

STATUTORY AUTHORITY: KRS 194A.050(1), 205.795, 405.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 (1), 205.795, and 405.520 authorize the secretary to promulgate administrative regulations to operate the Child Support Enforcement Program (CSEP) in accordance with federal law and regulations. 45 C.F.R. 303.2 requires access to the child support application process to be accessible[~~provided~~] to the public. This administrative regulation specifies the process by which an individual may apply for child support services, the scope of services available, and the process for an interstate case.

Section 1. Child Support Enforcement Case Types. (1) Kentucky Transitional Assistance Program (K-TAP) or Kinship Care.

(a)1. An applicant for, or recipient of, K-TAP or Kinship Care shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1) and 921 KAR 2:006.

2. The assignment shall:

a. Include members of the case for whom support rights apply; and

b. Be completed when applying for K-TAP or Kinship Care benefits using the application form incorporated by reference in 921 KAR 3:030.

(b) An applicant or recipient shall cooperate in all phases of child support activity that shall, if known, include:

1. The name of the noncustodial parent or obligor;

2. The Social Security number of the noncustodial parent or obligor;

3. Information to assist in the:

a. Location of the noncustodial parent or obligor;

b. Enforcement of a child support order; or

c. Review or modification of a child support order;

4. Establishment of:

a. Paternity, if paternity has not been established; and

b. An assigned support obligation;

5. Enforcement of:

a. An assigned support obligation; and

b. A spousal support order if the cabinet is collecting for a child who resides with the spouse or former spouse; and

6. Forwarding any child support payment received to the cabinet's centralized collection unit.

(2) Foster Care.

(a) The CSEP shall collect and disburse child support on behalf of a child for whom:

1. The state is making a foster care maintenance payment as required by 42 U.S.C. 657 and an assignment of rights has been made; or

2. The cabinet has custody, and there is an order for the child's parent or parents to pay child support to the cabinet pursuant to KRS 610.170.

(b) The child's benefit worker with responsibility for the foster care child shall:

1. Cooperate with the CSEP;

2. Review and approve a foster care child support referral;

3. Complete a change of status if a change occurs that relates to the child support process; and

4. Forward to the CSEP a copy of the child support court documents.

(c)[~~1.~~] If a child with special needs is adopted in accordance with 922 KAR 1:100 and reenters the custody of the cabinet, the cabinet shall:

1.[~~a.~~] Determine that good cause exists in accordance with Section 2(3) of this administrative regulation; or

2.[~~b.~~] Establish a child support obligation if:[~~pursuant to subparagraph 2 of this paragraph.~~

~~2. The cabinet shall pursue the establishment of a child support obligation if:~~]

a. A child with special needs adopted in accordance with 922 KAR 1:100 has reentered the custody of the cabinet due to the child's maltreatment or abandonment; and

b. The commissioner or designee recommends the establishment of child support.

(3) Medicaid only.

(a) If a Medicaid-only referral is made, the CSEP shall obtain the following information, if available:

1. Medicaid case number;

2. Name of the noncustodial parent or obligor;

3. Social Security number of the noncustodial parent or obligor;

4. Name and Social Security number of the child;

5. Home address of the noncustodial parent or obligor; [~~and~~]

6. Name and address of the noncustodial parent or obligor's place of employment; and

7. Whether the noncustodial parent has a health insurance policy and, if so, the policy name and number and name(s) of the person(s) covered.

(b) An application for Medicaid shall include an assignment of rights for medical support, pursuant to 907 KAR 1:011, Section 9, which shall be completed by using the application form incorporated by reference in 921 KAR 3:030.

(c) Except for a custodial parent who is pregnant or in her postpartum period, pursuant to 907 KAR 1:011, a custodial parent shall cooperate in all phases of medical support activity.

(d) A Medicaid-only recipient desiring full child support services, in addition to the medical support services, shall complete and submit to the CSEP the CS-140, Assignment of Rights and Authorization to Collect Support.

(4) Nonpublic Assistance.

(a) In accordance with KRS 205.721, the CSEP shall make child support services available to any individual who:

1. Assigns rights for medical support only;

2. Applies for services pursuant to paragraph (c) of this subsection; or

3. Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance.

(b) The CSEP shall notify the family no longer eligible for public assistance, within five (5) working days, that child support services shall continue unless the CSEP is notified to the contrary by the family.

(c) Application Process for a Nonpublic Assistance Individual.

1.[~~a.~~] Upon the request of a nonpublic assistance applicant, the CSEP shall give an application packet to the applicant.

2.[~~b.~~] If the request is:

a.[~~(i)~~] Made in person, the packet shall be provided the same day; or

b.[~~(ii)~~] Not made in person, the packet shall be sent to the applicant within five (5) working days of the request.

3.[~~2.~~] The application packet shall include the:

a. CS-33, Non-K-TAP Application;

b. CS-168, Application for Direct Deposit; and

c. CS-11, Authorization and Acknowledgement of No Legal Representation.

4.[~~3.~~] In order to receive child support services, the applicant shall complete and return the:

a. CS-33, Non-K-TAP Application; and

b. CS-11, Authorization and Acknowledgement of No Legal Representation.

(d) Except for a putative father and location-only case, services provided to a nonpublic assistance client through the CSEP shall

be those services listed in Section 2 of this administrative regulation.

(e) If a case involves a putative father, services provided shall be those identified in Section 2(1)(b) and (c) of this administrative regulation.

(f) The CSEP shall obtain the following information from a nonpublic assistance applicant, if available:

1. Name, date of birth, and social security number of the child;
2. Name of the custodial and noncustodial parent or obligor;
3. Social Security number of the custodial and noncustodial parent or obligor;
4. Date of birth of the custodial and noncustodial parent or obligor;
5. Home address or last known address of the custodial and noncustodial parent or obligor; and
6. Name and address of the custodial and noncustodial parent's or obligor's employer or last known employer.

Section 2. General Services and Good Cause for All Case Types. (1) The CSEP shall provide child support services for a case type described in this administrative regulation in accordance with 42 U.S.C. 654. The services shall include:

(a) Location of the noncustodial parent or obligor;

(b) Location of the custodial parent for establishment of paternity;

(c) Establishment of paternity based upon the receipt of either:

1. A court order; or
2. An affidavit from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(d) Establishment of a child support or medical support obligation by:

1. Petitioning the court or administrative authority to establish child support pursuant to the Kentucky Child Support Guidelines; and
2. Petitioning the court or administrative authority to include private health insurance pursuant to 45 C.F.R. 303.31(b)(1) in new or modified court or administrative orders for support; or
3. Petitioning the court or administrative authority to include cash medical support in new or modified orders until such time as health insurance that is accessible and reasonable in cost, as defined in KRS 403.211(8)(a) and (b), becomes available;

(e) Enforcement of a:

1. Child support or medical support obligation; and
2. Spousal support obligation if the:

a. Client is the spouse or ex-spouse;
b. Child lives with the spouse or ex-spouse; and
c. Cabinet is collecting support on behalf of the child;

(f) Review and modification of an assigned support obligation in accordance with 921 KAR 1:400;

(g) Collection and disbursement of current and past-due support payments resulting from an assigned support obligation, less an annual twenty-five (25) dollar fee assessed against a custodial parent who has never received assistance, as defined in 42 U.S.C. 654(6)(b)(ii), during each Federal fiscal year in which $500 has been disbursed for the case; and

(h) Submit application to health plan administrator to enroll the child if the parent ordered to provide health insurance coverage is enrolled through the insurer and has failed to enroll the child.[~~For a Medicaid-only case type, application for health insurance coverage through an employer for the child if court or administratively ordered but not provided by either parent.~~]

(2) The CSEP shall open a case and determine needed action and services within twenty (20) calendar days of receipt of a:

(a) referral from the public assistance agency;

(b) Foster care referral; or

(c) nonpublic assistance application in accordance with Section 1(4)(c) of this administrative regulation.

(3) Good cause.

(a)1. If an applicant or client states that good cause for noncooperation exists, the applicant or client shall have the opportunity to establish a claim pursuant to 921 KAR 2:006.

2. Evidence for determination of good cause shall be pursuant to 921 KAR 2:006.

3. For a foster care child, good cause for nonenforcement of child support shall be determined to exist if evidence and criteria are met pursuant to 921 KAR 2:006 or 922 KAR 1:530.

(b) If the CSEP has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1), the CSEP shall not attempt location, establishment, modification, or enforcement of an assigned support obligation.

Section 3. Parent Locator Service and Associated Fee for Service. (1) Unless the cabinet has reason to believe an allegation of child maltreatment or domestic violence pursuant to KRS 205.730(1) or 921 KAR 2:006, Section 24, location shall be attempted for a:

(a) Public assistance case referred to the CSEP; or

(b) Nonpublic assistance case for which child support services are being provided.

(2) The CSEP shall attempt to locate a noncustodial parent or obligor and the noncustodial parent's or obligor's employer, sources of income, assets, property, and debt, if necessary, for a public assistance case or nonpublic assistance case assigned to the CSEP pursuant to KRS 205.712 and 205.730(5) 45 C.F.R. 303.69 or 303.70.

(3) In accordance with KRS 205.730(4), location services shall be provided in a parental kidnapping case.

(4) The CSEP shall provide location services to a putative father in accordance with KRS 205.730(2) and (4).

Section 4. Interstate Process for Child Support Enforcement Services. In accordance with KRS 205.712, 407.5101-407.5902, and 45 C.F.R. 303.7[~~303.70~~], the CSEP shall:

(1) Extend to an interstate child support case the same services available to an intrastate case; and

(2) Provide an agency in a responding state with sufficient and accurate information and documentation on the appropriate interstate transmittal forms, the:

(a) CS-98, General Testimony;

(b) CS-99, Affidavit in Support of Establishing Paternity; and

(c) CS-100, Uniform Support Petition.

Section 5. Public Awareness. The effort, pursuant to KRS 205.712(2)(g), to publicize the availability of the CSEP's services and encourage their use may include:

(1) Public service announcements;
(2) Posters;
(3) Press releases;
(4) Videos;
(5) Annual reports;
(6) Newsletters;
(7) Mail inserts;
(8) Pamphlets; [~~and~~]
(9) Letters; and
(10) Internet.

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

(a) "CS-11, Authorization and Acknowledgement of No Legal Representation", edition 4/10[~~1/09~~];

(b) "CS-33, Non-KTAP Application", edition 4/10[~~1/09~~];

(c) "CS-98, General Testimony", edition 1/09;

(d) "CS-99, Affidavit in Support of Establishing Paternity", edition 1/09;

(e) "CS-100, Uniform Support Petition", edition 1/09;

(f) "CS-140, Assignment of Rights and Authorization to Collect Support", edition 4/10[~~1/09~~]; and

(g) "CS-168, Application for Direct Deposit", edition 1/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENO, Deputy Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: December 11, 2009

FILED WITH LRC: December 14, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2010 at 9 a.m. in Room B, Third Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2010, 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 February 01, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Devine, CSE Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the process which an individual may apply for child support services, the scope of services available, and the process for an interstate case.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures for child support application, make the scope of services accessible to the public and establish the procedures for an interstate case in accordance with 42 U.S.C. 651 – 654, 657, 663, 666 and 45 C.F.R. 302 and 303.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under KRS 194A.050(1), 205.721, 205.795, 405.520, and by virtue of applying for federal funds under 42 U.S.C. 651-654, 657, 663, and 666, to specify the child support services available. Per KRS 403.211(7) and (8), if private health care insurance coverage is reasonable in cost and accessible to either parent at the time the request for coverage is made, the court shall order the parent to obtain or maintain coverage, and the court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, the cost of health care insurance coverage for the child, in addition to the support ordered under the child support guidelines. If private health care insurance coverage is not reasonable in cost and accessible at the time the request for the coverage is made, the court order shall provide for cash medical support until private health care insurance coverage becomes reasonable in cost and accessible pursuant to 42 U.S.C. 652(f).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures used by the cabinet for application service provision and interstate process for child support.

(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 adds language to provide procedures to conform to KRS 403.211(11) and conform to the updates to 45 C.F.R. 303.30 and 303.31; particularly the requirement for obtaining the following information on a case: Whether the noncustodial parent has a health insurance policy and if so, the policy name(s) and number(s) and name(s) of person covered. The following incorporated forms were updated: "CS-11, Authorization and Acknowledgement of No Legal Representation", "CS-33, Application for Child Support Services", and "CS-140, Assignment of Rights and Authorization to Collect Support".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to incorporate corrections and to update state forms used in accordance with KRS Chapter 405 and 407. The amendment will provide revisions to the incorporated forms that will improve child support policy and procedures and make updates to the regulation in order to comply with the federal mandate of House Bill 489 passed in the 2009 legislative session; particularly the mandate to require the court to determine if medical support for the child is available and procedures for enforcing medical support.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by outlining that child support services available include petitioning the court or administrative authority for medical support and enforcing medical support in addition to child support.

(d) How the amendment will assist in the effective administration of the statutes: The amendment identifies the need to petition the court or administrative authority for the establishment and enforcement of medical support. The incorporated forms mentioned above have been modified to provide the applicant with information mandated by 45 C.F.R. 303.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the Child Support Enforcement Program, Contracting Officials, Custodial Parents, Noncustodial Parents and their child(ren). As of 9/30/09, CSE currently has 309,111 active child support cases.

(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 Child Support Enforcement Program and Contracting Officials' will use the incorporated forms which have been updated to comply with federal mandates, codified by HB 489 of the 2009 session. If the court or administrative authority establishes medical support the Custodial and Noncustodial Parents will have to enroll their child(ren) in employer provided health insurance coverage if it is accessible and "reasonable in cost" or provide for "cash medical support".

(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 increase in funding necessary for CHFS to comply with this administrative regulation. HB 489, codified in KRS 403.211(8)(a), states the cost for coverage to the responsible parent does not exceed five percent (5%) of his or her gross income. It further states, this five percent (5%) standard applies to the cost of adding the child to an existing policy, the difference in the cost between a single and a family policy, or the cost of acquiring a separate policy to cover the child.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): CHFS will avoid the substantial penalties which would occur for noncompliance. Being enrolled in a private health insurance plan provided by one or both parent(s) that is "accessible and "reasonable in cost" will benefit the child(ren) as the custodial parent and child(ren) will be able to select the health care provider of the child(ren). KRS 403.211(8)(a) & (b), HB 489 of the 2009 General Session, and Federal mandate, U.S. Code 652(f), defines health insurance that is "accessible" and "reasonable in cost."

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

(a) Initially: There will be no additional need for funding to implement the changes to this administrative regulation. However, failure to implement would place CHFS in conflict with federal and state law and could result in substantial penalties to the TANF federal grant.

(b) On a continuing basis: Ongoing incorporation of medical support in existing or new child support orders should require no increase in funding for this administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include thirty-four (34) percent state general funds and sixty-six (66) percent federal funds under, Title IV-D of

the Social Security Act.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment to the administrative regulation did not establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied to this amendment to the administrative regulation as it will be applied in a like manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 651-654, 657, 663, 666; particularly for this amendment 42 U.S.C. 652(f) and 666(a)(19), 45 C.F.R. 302 and 303; particularly for this amendment 45 C.F.R. 303.30, 303.31 and 303.32

2. State compliance standards. KRS 194A.050(1), 205.721, 205.795, 405.520

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the 42 U.S.C. 652(f), adopted in House Bill 489 by the 2009 General Assembly.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Income Support, Child Support Enforcement and Contracting Officials' offices are 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. 42 U.S.C. 651-654, 657, 663, 666, KRS 194A.050(1), 205.705, 205.710-205.800, 205.992, 213.046(4), 403.211, 405.430(5), 405.520, 405.467, 406.021, 406.025, 407.5101-407.5902, 610.170, 45 C.F.R. 301.1, 302.30, 302.31, 302.33 – 302.36, 302.50, 302.65, 302,80, 303.2, 303.3 – 303.15, 303.30, 303.31, 303.69, and 303.70

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 amendment to this administrative regulation will not generate any new revenue the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue will continue at the same rate in subsequent years with the potential for modest increases based on the increase in the caseload.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program. This program has been operational since 1975.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program. This program has been operational since 1975.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

921 KAR 2:055. Hearings and appeals.

RELATES TO: KRS Chapter 13B, 45.237, 205.211, 205.231, 205.237, 30 U.S.C. 901-944, 38 U.S.C. 1101-1163, 1501-1525, 42 U.S.C. 401-434, 1381-1383f, 8621-8630, 45 U.S.C. 231-231v

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 205.231(5), 42 U.S.C. 601 -619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 601 to 619 requires states receiving Temporary Assistance for Needy Families (TANF) grants to provide a grievance procedure for TANF participants and outline this procedure in the TANF state plan. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth, and KRS 205.231(5) allows the cabinet to promulgate administrative regulations for the hearing process. This administrative regulation establishes the requirements to be followed in conducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-Income Home Energy Assistance Program (LI-HEAP), or the State Supplementation Program (SSP).

Section 1. Hearing Information. A participant shall be informed of:

(1) The right to a hearing:

(a) Orally, at the time of application; and

(b) In writing:

1. At the time of application; and

2. When an action is taken which affects the benefits of the participant;

(2) The procedures for requesting a hearing, as defined in Section 3 of this administrative regulation; and

(3) Who may represent the participant in a hearing as defined in Section 2 of this administrative regulation.

Section 2. Request for a Hearing. (1) An individual shall request a hearing by:

(a) Completing and submitting a PAFS-78, [“]Request for Hearing, Appeal, or Withdrawal[”];

(b) Submitting a written request; or

(c) Making an oral request.

(2) The hearing request may be:

(a) Submitted to the local department for community based services office; or

(b) Sent to the Cabinet for Health and Family Services, Division of Administrative Hearings, Families and Children Administrative Hearings Branch, 275 East Main, Frankfort, Kentucky 40621.

(3) The reason for the hearing shall be included in the hearing request.

Section 3. Timeframe for Hearing Request. (1) A written or oral request for a hearing shall be considered timely if received by the cabinet within:

(a) Forty (40) days of the date of the advance notice of adverse action;

(b) Thirty (30) days of the notice of:

1. Denial of an application; or

2. Decrease or discontinuance of an active case; or

(c) The time period the action is pending if the hearing issue is a delay in action.

(2) If a hearing officer determines an appellant meets good cause criteria in accordance with subsection (3)[~~3~~] of this section, the appellant may be granted up to an additional thirty (30) days to submit a hearing request.

(3) An appellant may be granted good cause by the cabinet:

(a) For:

1. A delay in requesting a hearing;

2. A delay in requesting a continuation of benefits;

3. Failure to appear for a hearing; or

4. Postponement of a scheduled hearing; and

(b) If the appellant:

1. Was away from home during the entire filing period;

2. Is unable to read or to comprehend the right to request a hearing on an adverse action notice;

3. Moved, resulting in delay in receiving or failure to receive the adverse action notice;

4. [~~Or~~] A household member had a serious illness; or

5. Was not at fault for the delay of the request, as determined by the hearing officer.

Section 4. Continuation of Assistance Program Benefits. (1) When a hearing is requested, benefits shall remain inactive or reduced pending the issuance of a final order unless the appellant requests a continuation of benefits.

(2) Benefits shall be reinstated to the benefit level that was received prior to the adverse action being taken if the request for a continuation of benefits is received within:

(a) Ten (10) days of the date on the notice of adverse action; or

(b) Twenty (20) days of the date on the notice of adverse action or notice if the reason for delay meets the good cause criteria contained in Section 3(3)[4~~(3)~~] of this administrative regulation.

(3) If the program benefit has been reduced or discontinued as a result of a change in law, regulation, or policy of the cabinet, subsection (2) of this section shall not apply.

(4) If the action taken by the agency is upheld, continued, or reinstated benefits shall be:

(a) Considered overpayments as defined in KRS 205.211; and

(b) Collected in accordance with KRS 45.237.

Section 5. Hearing Notification. (1) The Division of Administrative Hearings, Families and Children Administrative Hearings Branch shall acknowledge a hearing request.

(2) In accordance with KRS 13B.050, the notice of the hearing shall contain information regarding the:

(a) Hearing process, including the right to case record review prior to the hearing;

(b) Right to representation;

(c) Availability of free representation by legal aid or assistance from other organizations within the community; and

(d) Time and location of the hearing.

Section 6. Withdrawal or Abandonment of Request. (1) The appellant may withdraw a hearing request prior to the:

(a) Hearing; or

(b) Final order being issued if the hearing has already been conducted.

(2) The cabinet shall consider a hearing request abandoned if the appellant or authorized representative fails to:

(a) Appear for the scheduled hearing without notifying the cabinet prior to the hearing; and

(b) Establish good cause for failure to appear, in accordance with the criteria specified in Section 3(3)[4~~(3)~~] of this administrative regulation, within ten (10) days of the scheduled hearing date.

Section 7. Appellant's Hearing Rights. (1) In addition to the rights described in Section 6[~~(2)~~] of this administrative regulation, the appellant shall have the right to submit additional information in support of the claim.

(2) The appellant shall have the right to a medical assessment at the expense of the cabinet by a person not associated with the original action if the hearing:

(a) Involves medical issues; and

(b) Officer considers it necessary.

(3) If a request for a medical assessment at cabinet expense is received and denied by the hearing officer, the denial shall;

(a) Be in writing; and

(b) Specify the reason for the denial.

Section 8. Postponement of a Hearing. (1) An appellant shall be entitled to a postponement of a hearing if the:

(a) Request for the postponement is made prior to the hearing; and

(b) Need for the delay is due to an essential reason beyond the control of the appellant in accordance with good cause criteria contained in Section 3(3)[4~~(3)~~] of this administrative regulation.

(2) The hearing officer shall decide if a hearing is postponed.

(3) The postponement of a hearing shall not exceed thirty (30) days from the date of the request for postponement.

Section 9. Conduct of a Hearing. (1) A hearing shall be:

(a) Scheduled by the hearing officer; and

(b) Conducted in accordance with KRS 13B.080 and 13B.090.

(2) A hearing officer shall make an effort to conduct a hearing at a location within the state that is convenient for the appellant and other parties involved.

(3) To secure all pertinent information on the issue, the hearing officer may:

(a) Examine each party or witness who appears; and

(b) If necessary, collect additional evidence from a party.

(4) Parties to a telephonic hearing shall:

(a) Submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the hearing being convened; and

(b) Within the timeframe specified by the hearing officer, mail the hearing officer and opposing party any documents or written materials that:

1. Are introduced as evidence into the hearing record; and

2. Have not been supplied to the opposing party prior to the hearing.

(5) If evidence addressed in subsection (4) of this section is not provided to the hearing officer and the opposing party, the evidence may be excluded from the hearing record.

Section 10. Recommended Order. (1) After the hearing has concluded, the hearing officer shall draft a recommended order which:

(a) Summarizes the facts of the case;

(b) Specifies the:

1. Reasons for the recommended order; and

2. Address to which a party in the hearing may send an exception to the recommended order; and

(c) Identifies the:

1. Findings of fact;

2. Conclusions of law;

3. Supporting evidence; and

4. Applicable state and federal regulations.

(2) A copy of the recommended order shall be sent to the:

(a) Appellant or representative; and

(b) Local Department for Community Based Services office.

Section 11. Written Exceptions and Rebuttals. (1) If a party to a hearing disagrees with the recommended order, the party may file a written exception with the Commissioner of the Department for Community Based Services or designee.

(2) A written exceptions or rebuttal shall:

(a) Be filed within fifteen (15) days of the date the recommended order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each other party involved in the hearing.

Section 12. Final Order. Unless the issue is remanded to the hearing officer for further action, the commissioner or designee shall issue a final order within forty-five (45) days of receipt of the recommended order.

Section 13. Appeal of the Final Order. (1) A participant or authorized representative may appeal a final order by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3).

(2) A request for appeal of a final order shall be submitted:

(a)1. Orally; or

2. In writing; and

(b) To the:

1. Local Department for Community Based Services office; or

2. Appeal board.

(3) The date a request is received by the cabinet is considered the date the request is filed.

(4) An appeal request shall be considered timely if the request is received within:

(a) Twenty (20) days of the date the final order was mailed; or

(b) Thirty (30) days of the date the final order was mailed if good cause, in accordance Section 3(3)[~~4(3)~~] of this administrative regulation, is met.

Section 14. Appellant's Rights Prior to Appeal Board Consideration. (1) An appeal to the appeal board shall be acknowledged in writing to the appellant and authorized representative.

(2) The acknowledgment shall:

(a) Advise the appellant that:

1. A brief may be filed; or

2. Upon the appeal board approval, new or additional evidence may be submitted; and

(b) State the tentative date on which the board shall consider the appeal.

Section 15. Appeal Board Review. (1) The appeal board shall consider:

(a) The records of the hearing; and

(b) New evidence or exhibits introduced before the appeal board in accordance with subsection (2), (3), or (4) of this section.

(2) If an appeal is being considered on the record, the parties may:

(a) Present written arguments; and

(b) At the board's discretion, be allowed to present oral arguments.

(3) If needed, the appeal board may request additional evidence to resolve the appeal.

(4) Additional evidence shall be accepted by the board after a party to the hearing has been given seven (7) days notice of the opportunity to:

(a) Object to the introduction of additional evidence; or

(b) Rebut or refute any additional evidence.

Section 16. The Appeal Board Decision. (1) The decision of the appeal board shall be in accordance with KRS 205.231.

(2) The appeal board shall be allowed to reverse the decision in subsection (1) of this section if the following criteria are met:

(a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and

(b) Within twenty (20) days of the appeal board decision, the appellant, or household member whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:

1. Supplemental Security Income pursuant to 42 U.S.C. 1381-1383f;[~~security income;~~]

2. Retirement, Survivors, and Disability Insurance, pursuant to 42 U.S.C. 401-434;[~~disability insurance;~~]

3. Federal Black Lung Benefits pursuant to 30 U.S.C. 901-944[~~black lung benefits~~];

4. Railroad Retirement Benefits pursuant to 45 U.S.C. 231-231v[~~retirement benefits~~]; or

5. Veterans Administration Benefits based on 100% disability pursuant to 38 U.S.C. 1101-1163 or 1501-1525.

Section 17. Payments of Assistance. (1) Payments of assistance shall be made within ten (10) days of the receipt of a final order or a decision of the appeal board and shall include:

(a) The month of application; or

(b) If it is established that the appellant was eligible during the entire period in which assistance was withheld, a month in which incorrect action of the cabinet adversely affected the appellant.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of a final order or a decision of the appeal board.

Section 18. Limitation of Fees. (1) The cabinet shall not be responsible for payment of attorney fees.

(2) Pursuant to KRS 205.237, an attorney representing an appellant shall not charge more than the following amounts for his services:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the appeal board;

(c) $175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court; or

(d) $300 for preparatory work, briefs, and other materials related to an appeal to the Court of Appeals.

(3) The cabinet shall approve the amount of a fee, if the:

(a) Appellant and legal counsel agree to the fee; and

(b) Fee is within the maximums specified in subsection (2) of this section.

(4) Collection of an attorney fee shall:

(a) Be the responsibility of the counsel or agent; and

(b) Not be deducted from the benefits provided to an appellant.

Section 19. Incorporated by Reference. (1) The form, "PAFS-78, Request for Hearing, Appeal, or Withdrawal, edition 4/10[~~6/06~~]", is incorporated by reference.

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

PATRICIA WILSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 11, 2009

FILED WITH LRC: December 14, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2010 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 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 February 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements to be followed in con-

ducting a hearing related to the Kentucky Transitional Assistance Program (K-TAP), the Low-income Home Energy Assistance Program (LIHEAP), and the State Supplementation Program.

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish uniform standards for conducting hearings regarding public assistance programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of uniform standards for hearings and appeals in Kentucky public assistance programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statues through its provision of hearing and appeal opportunities to applicants for, and recipients of, public assistance programs.

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

(a) How the amendment will change this existing administrative regulation: The cabinet is amending the administrative regulation to: Add a discrimination statement to form PAFS 78, Request for Hearing, Appeal or Withdrawal, that meets the requirements established by the U.S. Department of Agriculture's Food Nutrition Services, the federal administrating agency for the food benefit program (a.k.a., Food Stamps). Form PAFS-78 is used to request hearings for all benefit programs administered by the Department for Community Based Services. Technical corrections in accordance with KRS Chapter 13A were also made to the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure compliance with requirements of the U.S. Department of Agriculture, Food Nutrition Services and KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its revision of incorporated materials in accordance with federal requirements concerning program administration.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by ensuring compliance with requirements of federal benefit programs and KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts K-TAP, LIHEAP, State Supplementation, food benefit program applicants and recipients. As of August 2009, there were 23,484 families receiving K-TAP and 4,007 State Supplementation recipients. During FY 2009, LIHEAP served 299,183 households. In August 2009, there were 332,579 households receiving food benefits.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will have to take no new action as a result of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative will create no new cost for any regulated entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will benefit from the enhanced clarity provided through the technical corrections made to the administrative regulation and incorporated materials.

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

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding to be used for the implementation and enforcement of this administrative regulation include State General, federal Temporary Assistance for Needy Families (TANF), and federal LIHEAP funds. The funding necessary for the implementation and enforcement of this administrative regulation is included within the existing departmental budget.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes limits for attorney fees that may be charged to a public assistance applicant or recipient for representation in accordance with KRS 205.237. The amendment to this administrative regulation makes no change to the established fees.

(9) TIERING: Is tiering applied? Tiering is not applied since application of policy is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 to 619

2. State compliance standards. KRS 13B.170, 194A.10(2), 194A.50(1), 205.231(5)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes no stricter, additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation imposes no stricter, additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B 170, 194A.010(2), 194A.050(1), 205.231(5) 42 U.S.C. 601 to 619

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? These programs have been operational for numerous years. The amendment to this administrative regulation will not generate any revenues in the first year.

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

(c) How much will it cost to administer this program for the first

year? The amendment to this administrative regulation will not require any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will not require any additional cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 15:110. Ethanol tax credit.

RELATES TO: KRS 141.020, 141.030, 141.040, 141.0401, 141.422, 141.4242, 141.4246, 141.4248

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.4242 provides for a nonrefundable credit for producers of ethanol. KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.4246 requires an ethanol producer that is a pass-through entity or an agricultural cooperative association to notify the department electronically of all partners, members, shareholders, or beneficiaries who may claim any amount of the approved credit. This administrative regulation establishes guidelines and filing requirements for an ethanol producer filing a tax credit claim for gallons of ethanol produced in this state.

Section 1. Definitions. (1) "Applicant" means an ethanol producer that files a tax credit claim as provided by KRS 141.4242.

(2) "Application" means an ethanol tax credit claim filed with the department for gallons of ethanol produced in this state as provided by KRS 141.4242(3).

(3) "ASTM" means American Society for Testing and Materials.

(4) "Corporation" is defined by KRS 141.010(24).

(5) "Department" is defined by KRS 141.010(2).

(6) "Ethanol" is defined by KRS 141.422(9).

(7) "Ethanol producer" is defined by KRS 141.422(11).

(8) "Identification number" means:

(a) Social Security number for individuals;

(b) Federal Employer Identification Number for general partnerships, estates, and trusts;

(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities

(9) "Individual" is defined by KRS 141.010(7).

(10) "Limited liability pass-through entity" is defined by KRS 141.010(28).

(11) "Pass-through entity" is defined by KRS 141.010(26).

(12) "Tax credit" means the ethanol credit authorized by KRS 141.4242.

Section 2. Application for Tax Credit. (1) An applicant shall file an application with the department on Schedule ETH (Form number 41A720ETH), incorporated by reference in 103 KAR 3:040.

(2) Schedule ETH shall be mailed to the department on or before January 15 for the preceding calendar year.

Section 3. Proof of ASTM specification. (1) An ethanol producer shall provide proof that the ethanol gallons reported on the application meet ASTM specification D4806 for ethanol.

(2) Proof submitted by an ethanol producer shall be in the form of documentation of laboratory results that certify that the ethanol reported on the Schedule ETH meet the ASTM specification. An independent laboratory or a laboratory designated by the Kentucky Department of Agriculture shall be used to generate the laboratory results.

(3) Failure to submit documented laboratory results that certify that the ethanol meets the ASTM specification with the Schedule ETH shall result in the department disallowing the credit.

(4)(a) Separate proof of the ASTM specification shall be provided to the department by an ethanol producer on July 1 and December 31 for each calendar year that a Schedule ETH is submitted.

(b) Failure to submit proof of meeting the ASTM specifications on the dates prescribed in this subsection shall result in the denial of the credit.

(c) If proof is timely submitted and the proof certifies that the ethanol does not meet the ASTM specification, then all credit claimed for gallons of ethanol back to the previous testing date of July 1 or December 31 shall be disallowed.

Section 4. Use of the Tax Credit. (1) An applicant who is an individual shall apply the tax credit against the tax liability imposed by KRS 141.020.

(2) An applicant that is a corporation shall apply the tax credit against the tax liability imposed by KRS 141.040 and 141.0401.

(3) An applicant that is a limited liability pass-through entity shall apply the tax credit against the tax liability imposed by KRS 141.0401.

(4) An applicant that is a pass-through entity not subject to the tax imposed by KRS 141.0401 shall distribute the tax credit to each partner based on the partner's distributive share.

(5) An applicant that is an estate or trust shall apply the tax credit against the tax liability imposed by KRS 141.030, or shall distribute the tax credit to each beneficiary based on the beneficiary's distributive share.

(6) An applicant claiming the tax credit shall attach the application approved by the department to its tax return on which the tax credit is claimed.

(7) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1, Form 720S, Form number 41A720S(K-1); Form 765, Form number 41A765(K-1); or Form 765GP Form number 42A765GP(K-1), incorporated by reference in 103 KAR 3:040, to the partner's, member's or shareholder's tax return on which the credit is claimed.

Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity or agricultural cooperative association organized under KRS Chapter 272 claiming the ethanol tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

(2) The electronic filing shall contain:

(a) Each partner's, member's, or shareholder's name, address, telephone number, and identification number; and

(b) Each partner's, member's, or shareholder's distributive share of the tax credit.

(3) Any information required by subsection (2) of this section shall be filed as a separate document attached to the electronic mail message in plain format text or plain ASCII format.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2010, at 10 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 1, 2010. 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: DeVon 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: DeVon Hankins, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation explains how an ethanol producer shall file a tax credit claim with the Department of Revenue.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide an ethanol producer the guidelines and filing requirements when filing a claim for a tax credit with the Department of Revenue.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide an ethanol producer the information necessary to file tax a credit claim with the Department of Revenue.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All entities filing for an ethanol tax credit claim as provided by KRS 141.4242.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will follow the guidance provided in this administrative regulation when filing a tax credit claim as provided by 141.4242.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will have guidance which will expedite the filing of a tax credit claim for ethanol.

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

(a) Initially: There will be a minimal cost for the department to implement this administrative regulation. A small amount of costs associated with notifying taxpayers of this administrative regulation will be incurred.

(b) On a continuing basis: There will be minimal costs for the Department of Revenue on a continuing basis as a result 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 additional funding will be needed 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 will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation as it applies to all entities filing a tax credit claim for ethanol.

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 Finance and Administration Cabinet, Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. A small increase in expenditures for the Department of Revenue will occur to notify taxpayers of 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? Unknown

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

(c) How much will it cost to administer this program for the first year? A very small increase in expenditures will occur in the first year of implementation.

(d) How much will it cost to administer this program for subsequent years? Minimal costs for subsequent years.

FINANCE AND ADMINISTRATION CABINET
Kentucky Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 15:120. Cellulosic Ethanol tax credit.

RELATES TO: KRS 141.020, 141.030, 141.040, 141.0401, 141.422, 141.4244, 141.4246, 141.4248

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.4244 provides a nonrefundable tax credit to producers of cellulosic ethanol. KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws. KRS 141.4246 requires an ethanol producer that is a pass-through entity or an agricultural cooperative association to notify the department electronically of all partners, members, shareholders, or beneficiaries who may claim any amount of the approved credit. This administrative regulation establishes guidelines and filing requirements for a cellulosic ethanol producer filing a tax credit claim for gallons of cellulosic ethanol produced in this state.

Section 1. Definitions. (1) "Applicant" means a cellulosic ethanol producer that files a tax credit claim as provided by KRS 141.4244.

(2) "Application" means a cellulosic ethanol tax credit claim filed with the department for gallons of cellulosic ethanol produced in this state as provided by KRS 141.4244(3).

(3) "ASTM" means American Society for Testing and Materials.

(4) "Cellulosic ethanol" is defined by KRS 141.422(6).

(5) "Cellulosic ethanol producer" is defined by KRS 141.422(7).

(6) "Corporation" is defined by KRS 141.010(24).

(7) "Department" is defined by KRS 141.010(2).

(8) "Identification number" means:

(a) Social Security number for individuals;

(b) Federal Employer Identification Number for general partnerships, estates, and trusts;

(c) Kentucky corporation income tax and limited liability entity tax account number for corporations and limited liability pass-through entities.

(9) "Individual" is defined by KRS 141.010(7).

(10) "Limited liability pass-through entity" is defined by KRS 141.010(28).

(11) "Pass-through entity" is defined by KRS 141.010(26).

(12) "Tax credit" means the cellulosic ethanol tax credit authorized by KRS 141.4244.

Section 2. Application for Tax Credit. (1) An applicant shall file an application with the department on Schedule CELL (Form number 41A720CELL, incorporated by reference in 103 KAR 3:040).

(2) Schedule CELL shall be mailed to the department on or before January 15 for the preceding calendar year.

Section 3. Proof of ASTM specification. (1) A cellulosic ethanol producer shall provide proof that the cellulosic ethanol gallons reported on the application meet ASTM specification D4806 for ethanol that is produced from cellulosic biomass materials.

(2) Proof submitted by a cellulosic ethanol producer shall be in the form of documentation of laboratory results that certify that the cellulosic ethanol reported on the Schedule CELL meet the ASTM specification. An independent laboratory or a laboratory designated by the Kentucky Department of Agriculture shall be used to generate the laboratory results.

(3) Failure to submit documented laboratory results that certify that the cellulosic ethanol meets the ASTM specification with the Schedule CELL shall result in the department disallowing the credit.

(4)(a) Separate proof of the ASTM specification shall be provided to the department by a cellulosic ethanol producer on July 1 and December 31 for each calendar year that a Schedule CELL is submitted.

(b) Failure to submit proof of meeting the ASTM specifications on the dates prescribed in this subsection shall result in the denial of the credit.

(c) If proof is timely submitted and the proof certifies that the cellulosic ethanol does not meet the ASTM specification, then all credit claimed for gallons of cellulosic ethanol back to the previous testing date of July 1 or December 31 shall be disallowed.

Section 4. Use of the Tax Credit. (1) An applicant who is an individual shall apply the tax credit against the tax liability imposed by KRS 141.020.

(2) An applicant that is a corporation shall apply the tax credit against the tax liability imposed by KRS 141.040 and 141.0401.

(3) An applicant that is a limited liability pass-through entity shall apply the tax credit against the tax liability imposed by KRS 141.0401.

(4) An applicant that is a pass-through entity not subject to the tax imposed by KRS 141.0401 shall distribute the tax credit to each partner based on the partner's distributive share.

(5) An applicant that is an estate or trust shall apply the tax credit against the tax liability imposed by KRS 141.030, or shall distribute the tax credit to each beneficiary based on the beneficiary's distributive share.

(6) An applicant claiming the tax credit shall attach the application approved by the department to the tax return on which the tax credit is claimed.

(7) A partner, member, or shareholder claiming the tax credit shall attach a copy of Schedule K-1: Form 720S, Form number 41A720S(K-1); Form 765, Form number 41A765(K-1): or Form 765GP, Form number 42A765GP(K-1), incorporated by reference in 103 KAR 3:040, to the partner's, member's or shareholder's tax return on which the credit is claimed.

Section 5. Electronic Filings for Pass-through Entities. (1) Each pass-through entity or agricultural cooperative association organized under KRS Chapter 272 claiming the cellulosic ethanol tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

(2) The electronic filing shall contain:

(a) Each partner's, member's, or shareholder's name, address, telephone number, and identification number; and

(b) Each partner's, member's, or shareholder's distributive share of the tax credit.

(3) Any information required by subsection (2) of this section shall be filed as a separate document attached to the electronic mail message in plain format text or plain ASCII format.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22nd, 2010, at 10 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 1st, 2010. 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: DeVon 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

CONTACT PERSON: DeVon Hankins, Policy Advisor

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation explains how a cellulosic ethanol producer shall file a tax credit claim with the Department of Revenue.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to provide a cellulosic ethanol producer the guidelines and filing requirements when filing a claim for a tax credit with the Department of Revenue.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the department to promulgate administrative regulations necessary to administer and enforce Kentucky's tax laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide a cellulosic ethanol producer all the information necessary to file tax a credit claim with the Department of Revenue.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All entities filing for a cellulosic ethanol tax credit claim as provided by KRS 141.4244.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified in question (3) will follow the guidance provided in this administrative regulation when filing a tax credit claim as provided by 141.4244.

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

this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities in question (3) will have guidance which will expedite the filing of a tax credit claim for cellulosic ethanol.

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

(a) Initially: There will be a minimal cost for the department to implement this administrative regulation. A small amount of costs associated with notifying taxpayers of this administrative regulation will be incurred.

(b) On a continuing basis: There will be minimal costs for the Department of Revenue on a continuing basis as a result 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 additional funding will be needed 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 will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation as it applies to all entities filing a tax credit claim for cellulosic ethanol.

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 Finance and Administration Cabinet, Department of Revenue.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. A small increase in expenditures for the Department of Revenue will occur to notify taxpayers of 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? Unknown

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

(c) How much will it cost to administer this program for the first year? A very small increase in expenditures will occur in the first year of implementation.

(d) How much will it cost to administer this program for subsequent years? Minimal costs for subsequent years.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(New Administrative Regulation)

501 KAR 16:001. Definitions for 501 KAR Chapter 16.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.220, 431.240, 431.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the definitions used in 501 KAR Chapter 16.

Section 1. Definitions. (1) "Cabinet" is defined in KRS 196.010(1) and 197.010(1).

(2) "Clergy witness" means the member of clergy designated in writing by the condemned person to witness the execution pursuant to KRS 431.250.

(3) "Commissioner" means:

(a) Commissioner as defined in KRS 196.010(2); or

(b) The commissioner's designee.

(4) "Condemned person" is defined in KRS 431.213(1).

(5) "Department" is defined in KRS 196.010(3) and 197.010(3).

(6) "Designated victim's family" means the three (3) members of the victim's family designated by the Commissioner to witness the execution pursuant to KRS 431.250.

(7) "Electrocution" means the method of execution described in KRS 431.220(1)(b).

(8) "Execution chamber" means the room or area of the Kentucky State Penitentiary designated by the Warden to conduct an execution.

(9) "Execution order" means:

(a) A mandate from the Supreme Court of Kentucky; or

(b) An Executive Order for execution signed by the Governor that:

1. Is entered in the Executive Journal maintained by the Secretary of State; and

2. May be commonly known as a Death Warrant.

(10) "Execution team" means the persons appointed by the Warden to carry out the execution of the condemned person and may include the IV team if execution is by lethal injection.

(11) "IV team" means the persons on the execution team who site and insert intravenous, or IV, lines in the condemned person.

(12) "Lethal injection" means the method of execution described in KRS 431.220(1)(a).

(13) "Media representatives" means the nine (9) representatives of the news media as identified in KRS 431.250 and selected in accordance with 501 KAR 16:300.

(14) "Minister of record" means the spiritual advisor designated by the condemned person in writing to visit him after the execution order is received.

(15) "Penitentiary" means the Kentucky State Penitentiary.

(16) "Victim's family" means the individuals who are eligible for designation by the Commissioner to witness the execution in accordance with KRS 431.250.

(17) "Warden" means the Warden of the Kentucky State Penitentiary or the Warden's designee.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 29, 2010 at 9 a.m. in the Kentucky Transportation Building's Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 February 1, 2010. 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: Amy V. Barker, Assistant General Counsel, Department of Justice and Public Safety Cabinet, 125 Holmes

Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the definitions used in 501 KAR Chapter 16.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish clear and concise definitions for terms used in 501 KAR Chapter 16 regarding the procedures for conducting an execution.

(c) How this administrative regulation conforms to the content of the authorizing statutes:
This administrative regulation establishes the definition of terms used in the administrative regulations used to administer legal executions in this Commonwealth, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes clear and concise definitions of terms used by the Department in administrative regulations for the conduct of executions in this Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately $17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately $17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.
State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in Bowling v. Kentucky Department of Corrections, -S.W.3d-, 2009 WL 4117353 (Ky.).

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 gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The promulgation of this administrative regulation will not generate any revenue for the Department of Corrections.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, and $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-): The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(New Administrative Regulation)

501 KAR 16:290. Preliminary and post execution procedures concerning condemned person.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 - 431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes preliminary and post execution procedures concerning the condemned person.

Section 1. Initial Steps After Receipt of Execution Order. After the Warden receives the execution order, the Warden shall:

(1) Read the execution order to the condemned person;

(2) Determine if the condemned person received his death sentence prior to March 31, 1998; and

(3) Ask the condemned person to designate in writing his choice of the method of execution pursuant to KRS 431.220(1), if the condemned person received his death sentence prior to March 31, 1998.

Section 2. Condemned Person's Designation of Witnesses. (1) The Warden shall ask the condemned person to designate in writing his clergy witness and the three (3) other individuals who may witness the execution pursuant to KRS 431.250.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately at the time that the Warden reads the execution order.

Section 3. Condemned Person's Designation Concerning Property, Funeral, and Disposition of Body. (1) The Warden shall ask the condemned person to designate in writing the person who may:

(a) Collect the condemned person's personal property after his death;

(b) Take charge of the condemned person's body; and

(c) Make necessary funeral arrangements.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply at least forty-eight (48) hours prior to the time scheduled for the execution.

(3) If the condemned person fails or refuses to designate a person to take charge of his body burial shall be in accordance with KRS 431.270.

Section 4. Visitation Designation. (1) After an execution order has been issued the Warden shall ask the condemned person to designate in writing:

(a) His attorney of record; and

(b) His minister of record.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately at the time that the Warden reads the execution order.

Section 5. Limitations on Condemned Person's Clothing, State-issued Items, and Personal Property. Notwithstanding 501 KAR 6:020, CPP 17.1, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the Warden may limit the condemned person's clothing, state-issued items, and personal property to the following:

(1) One mattress;
(2) Two sheets;
(3) One pillow;
(4) One pillow case;
(5) One pair of scrub-type pants;
(6) One scrub-type shirt;
(7) One pair of underwear;
(8) One pair of socks;
(9) One toothbrush;
(10) One tube of toothpaste;
(11) One bar of soap;
(12) One bath towel; and
(13) One wash cloth.

Section 5. Securing Condemned Person's Personal Property Prior to Execution. (1) The Warden shall inventory and secure any personal property of the condemned person prior to the execution.

(2) The Warden shall set the time for the removal of all personal property.

Section 6. Post-execution Steps. (1) The return on the judgment shall be made in accordance KRS 431.260 within seven (7) days of the execution.

(2) If the condemned person does not make other arrangements, the Department shall make arrangements for the delivery or burial of the body pursuant to KRS 431.270.

(3) The penitentiary shall call the person designated by the condemned person to pick up his personal property within three (3) days of the execution. If the person cannot be reached by phone, notice may be mailed to the person.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 29, 2010 at 9 a.m. in the Kentucky Transportation Building's Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 February 1, 2010. 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: Amy V. Barker, Assistant General Counsel, Department of Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures to be carried out in preparation for an execution including the designation of witnesses, disposition of the condemned person's property, and preparation of the condemned for execution. It also establishes the procedures to be carried out upon the conclusion of the execution including arrangements for delivery or burial of the body.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the procedures that must be carried out before and after an execution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures that must be carried out before and after an execution, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes clear procedures that designate the tasks that must be performed by certain Corrections personnel in preparation for and conclusion of a legal execution.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Except for the Department of Corrections personnel, none of the entities listed above will have take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with these procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist personnel of the Department of Corrections in the administration of their duties before and after an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately $17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately $17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in *Bowling v. Kentucky Department of Corrections*, -S.W.3d-, 2009 WL 4117353 (Ky.).

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? The promulgation of this administrative regulation will not generate any revenue for the state and local entities listed in the response to Question #2 above.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The promulgation of this administrative regulation will not generate any revenue for the state and local entities listed in the response to Question #2 above.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, and $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-):The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(New Administrative Regulation)

501 KAR 16:300. Execution procedures concerning witnesses, visitors, and demonstrators.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.220, 431.224, 431.240, 431.250, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. KRS 431.250 establishes persons who may attend the execution. This administrative regulation establishes preliminary and post execution procedures concerning witnesses, visitors, and demonstrators.

Section 1. Designation of Victim's Family to Witness Execution. (1) The Commissioner shall mail a letter to any of the victim's family described in KRS 431.250 for whom the Commissioner has received an address.

(2) The letter sent to the victim's family shall:

(a) State the scheduled execution date; and

(b) Request the victim's family member contact the Commissioner to notify him in writing if he wants to be considered for designation as a witness to the execution.(3) The Commissioner may seek an address for the victim's family by:

(a) Review of the condemned person's file; or

(b) Request made to the Commonwealth's Attorney who maintains information concerning the victims of the crime committed by the condemned person.

(4) The Commissioner shall designate pursuant to KRS 431.250 the three (3) members of the victim's family who may witness the execution.

(5) A letter stating the Commissioner's designation shall be mailed to each member of the victim's family who is designated to witness the execution.

Section 2. Additional Notifications Concerning Execution. (1) The Department shall mail a letter that states:

(a) The time that the person shall arrive to witness the execution; and

(b) The location where the person shall go.

(2) The letter shall be mailed to the:

(a) Designated victim's family;

(b) Condemned person's clergy witness and his other three (3) designated witnesses;

(c) Media representatives selected pursuant to section 3 of this administrative regulation;

(d) Coroner of the county where the execution is to be conducted; and

(e) Sheriff of the county where the condemned person was convicted.

Section 3. Media Procedures. (1) The Department shall send notice to the three news organizations specifically identified in KRS 431.250 as being allowed to have one representative. The notice shall request the identity of the representative who the news organ-

ization will designate to attend and witness the execution. The three news organizations shall send the names of the representatives in writing at least fourteen (14) days prior to the execution, unless notice from the Department indicates a different time to send the names of the representatives. The notice may request additional information about the representative as needed for security or management.

(2) The Kentucky Press Association may select by lottery three (3) representatives for the newspapers within the state as authorized by KRS 431.250. The Kentucky Press Association shall send the names of the representatives in writing at least fourteen (14) days prior to the execution, unless notice from the Department indicates a different time to send the names of the representatives. The Department may request additional information about the representatives as needed for security or management.

(3) Selection of the three (3) representatives for broadcast media identified in KRS 431.250 shall be made in the following manner:

(a) The Central Office Public Information Officer shall send a press release advising broadcast media that they may nominate a representative of their organization to attend and serve as an official media witness to the execution. The nomination shall be sent to the Commissioner's Office in writing at least fourteen (14) days prior to the execution unless notice from the department indicates a different time to send the names for nomination.

(b) A drawing shall be held to select the three (3) witnesses for broadcast media in the office of the Commissioner.

(4) The Department may establish a media staging area where scheduled press briefings may be held prior to the execution. Reporters may submit written questions at each press briefing for response at a subsequent briefing, except for the final briefing.

(5) Media witnesses to the execution shall not be permitted to use:

(a) Any item at the execution other than a pen or pencil and paper provided by the Department; and

(b) Audio or video recording devices on the grounds of the penitentiary where the execution is held.

Section 5. Visitors. (1) Notwithstanding 501 KAR 6:020, CPP 16.1 and 501 KAR 6:040, KSP 16-01-01, visits to the condemned person after receipt of the execution order shall be governed by this administrative regulation.

(2) Prior to the day of execution:

(a) Attorneys and paralegals may seek daily visits;

(b) Personal visitors who are listed on the condemned person's visitation list may seek daily visits;

(c) The minister of record may seek visits daily on weekdays; and

(d) Members of the news media may seek visits daily on weekdays.

(3) The visitor shall call the Kentucky State Penitentiary in advance of the requested visit to schedule the visit.

(4) The penitentiary shall designate the location of the visit.

(5) An attorney, paralegal, member of the clergy, or member of the news media shall not bring any item into the penitentiary, unless prior approval is given by the Warden. A personal visitor shall not bring any item into the penitentiary.

(6) Visitors shall be limited to four (4) at a time.

(7) The condemned person may refuse any visitors.

(8) The Warden may approve a request from the condemned person for a visitor that is not on the visitation list.

(9) A pat down search may be performed on all visitors before and after the visit.

(10) On the day of execution:

(a) The attorney of record may call for an appointment for any visit or phone call;

(b) The minister of record may call for an appointment for any visit;

(c) Personal visitors and media shall not be allowed visits;

(d) Items shall not be brought into the penitentiary, except for legal documents by the attorney of record;

(e) The condemned person shall not have more than one (1) visitor at a time; and

(f) Visits shall be noncontact.

Section 6. Security and Management Issues. (1) Witnesses may be staged at the discretion of the Warden.

(2) The Warden may deny entrance to the Kentucky State Penitentiary to any person, including a witness, media representative, or visitor, who is determined to be a security risk or who becomes disruptive while at the penitentiary.

(3) The Warden may limit the:

(a) Items brought onto the grounds of the penitentiary;

(b) Areas where persons may enter or remain at the penitentiary; and

(c) Time allowed in an area or on the grounds of the penitentiary.

(4) The Warden may set rules regarding any other matter deemed necessary for the security or management of the penitentiary.

Section 7. Demonstrator Procedures. (1) The Warden may designate an area for demonstrators.

(2) A press release shall be issued to identify the locations for demonstrators and the time allowed for demonstrations.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 29, 2010 at 9 a.m. in the Kentucky Transportation Building's Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 February 1, 2010. 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: Amy V. Barker, Assistant General Counsel, Department of Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures for the designation of witnesses to an execution, allowance of visitors to the condemned person, and designation of an area for demonstrators.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish clear and concise procedures for the designation of witnesses to the execution, visitors to the condemned person, and the demonstration area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures for the designation of witnesses to the execution, visitors to the condemned person, and the demonstration area, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures to be utilized by De-

partment of Corrections personnel for the designation of witnesses to the execution, visitors to the condemned person, and the demonstration area.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections personnel will do the preparation for and carrying out of the execution, as well as the post-execution procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in Bowling v. Kentucky Department of Corrections, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist the entities listed above in the proper administration of their duties during the execution process.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately $17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately $17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in Bowling v. Kentucky Department of Corrections, -S.W.3d-, 2009 WL 4117353 (Ky.).

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? The promulgation of this administrative regulation will not generate any revenue for the state and local entities listed in the response to Question #2 above.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The promulgation of this administrative regulation will not generate any revenue for the state and local entities listed in the response to Question #2 above.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, and $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel,

the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-):The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(New Administrative Regulation)

501 KAR 16:310. Pre-execution medical actions.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes medical actions to be performed after receipt of the execution order and prior to the execution.

Section 1. Pre-execution Medical Actions after Receipt of Execution Order. (1) For the fourteen (14) days prior to an execution, or for the remaining days if an execution order is received less than fourteen (14) days prior to an execution:

(a) All medical documentation shall be made in special notes in the condemned person's medical record.

(b) The Department shall arrange for nurse visits and checks on the condemned person during each shift daily. The contacts and observations from these nurse visits and checks shall be recorded in the special notes of the medical record referenced in paragraph (a) of this subsection.

(c) A mental health professional shall:

1. Personally observe and evaluate the condemned person five (5) days per week on Monday through Friday; and

2. Document his observations and evaluations in the condemned person's medical record immediately after personal contact with the condemned person.

(d) The designated medical professional or his designee shall review and initial the nursing documentation referenced in paragraph (b) of this subsection daily.

(e) A medical professional shall review the nursing documentation referenced in paragraph (b) of this subsection and doctor's documentation weekly.

(2) For the seven (7) days prior to an execution, or for the remaining days if an execution order is received less than seven (7) days prior to an execution:

(a) A medical professional shall:

1. Complete a physical examination; and

2. Place the documentation of the physical in the condemned person's medical record upon completion.

(b) A psychiatric interview and evaluation shall be:

1. Completed;

2. Placed in the condemned person's medical record; and

3. Sent to the Warden.

(3) The designated medical professional or his designee shall:

1. Personally observe and evaluate the condemned person's medical condition weekly; and

2. Document his observations and evaluations in the special notes of the condemned person's medical record immediately after personal contact with the condemned person.

(4) All Kentucky State Penitentiary medical and mental health staff shall be instructed to immediately notify the Warden and the designated professionals of any change in the condemned person's medical or psychiatric condition.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 29, 2010 at 9 a.m. in the Kentucky Transportation Building's Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 February 1, 2010. 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: Amy V. Barker, Assistant General Counsel, Department of Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures for medical and psychological examination and evaluation prior to execution.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the procedures for examination and evaluation of the condemned person's medical and psychological status prior to an execution.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures for examination and evaluation of the condemned person's medical and psychological status prior to an execution, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes clear procedures which will better assist personnel of the Department of Corrections to perform the examination and evaluation of a condemned person prior to execution.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative

regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in Bowling v. Kentucky Department of Corrections, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately $17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately $17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in Bowling v. Kentucky Department of Corrections, -S.W.3d-, 2009 WL 4117353 (Ky.).

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? The promulgation of this administrative regulation will not generate any revenue for the Department of Corrections.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, and $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity

involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-): The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(New Administrative Regulation)

501 KAR 16:320. Execution Team Qualifications.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the qualifications for the execution team.

Section 1. IV Team Qualifications. (1) The following people may serve on the IV team:

(a) Phlebotomist;

(b) Emergency Medical Technician;

(c) Paramedic; or

(d) Military Corpsman.

(2) Members of the IV Team shall have at least one (1) year of professional experience in their specialty.

(3) Prior to participating in an execution, the member of the IV team shall have participated in at least two (2) practices.

(4) Members of the IV team shall:

(a) Remain certified in their profession; and

(b) Fulfill any continuing education requirements in their profession.

Section 2. Execution Practice. (1) Each practice shall include a complete walk through of an execution.

(2) For execution by lethal injection:

(a) The execution team shall practice the lethal injection execution process at least ten (10) times during the course of one (1) calendar year; and

(b) Each practice shall include the siting of two (2) IVs into a volunteer.

(3) For execution by electrocution, the execution team shall practice the execution process at least two (2) times during the course of one (1) calendar year.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 29, 2010 at 9 a.m. in the Kentucky Transportation Building's Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 February 1, 2010. 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: Amy V. Barker, Assistant General Counsel, Department of Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the qualifications, experience, and practices required for participants on the execution team.

(b) The necessity of this administrative regulation: KRS Chapter 431 establishes the execution of death penalties and 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the qualification, experience, and practices required for participants on the execution team to ensure that each execution is carried out in a humane and painless manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements for participants on the execution team, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes clear requirements for the qualifications and experience required of participants on the execution team.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Except for the Department of Corrections personnel, none of the entities listed above will have to take

any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in Bowling v. Kentucky Department of Corrections, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately $17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately $17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in Bowling v. Kentucky Department of Corrections, -S.W.3d-, 2009 WL 4117353 (Ky.).

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? The promulgation of this administrative regulation will not generate any revenue for the Department of Corrections.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, and $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-): The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(New Administrative Regulation)

501 KAR 16:330. Lethal Injection Protocol.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocol for execution by lethal injection.

Section 1. Preliminary Steps. (1) If the condemned person is to be executed by lethal injection:

(a) His chest shall be shaved by a designated member of the execution team for heart monitor leads on the day of the execution; and

(b) The IV team shall complete an examination of the condemned person's veins within twenty-four (24) hours prior to the execution.

(2) The Warden shall order the condemned person escorted to the execution chamber and strapped to the gurney.

(3) The IV team shall run the IV lines to the condemned person by the following:

(a) Site and insert one (1) primary IV line; and

(b) Site and insert one (1) backup IV line.

(4) The location of the IV sites on the body of the condemned person shall be determined by the IV team members. The insertion site of preference shall be the following order:

(a) Arms;

(b) Hands;

(c) Ankles;

(d) Feet; or

(e) Neck.

(5) To best ensure that a needle is inserted properly into a vein, the IV team members shall look for the presence of blood in the valve of the sited needle.

(6) If the IV team cannot secure one (1) or more sites within one (1) hour, the Commissioner shall contact the Governor's Office and request that the execution be scheduled for a later date.

(7) If the IV team is able to establish the two IV lines, the team shall start a saline flow.

(8) The execution team shall:

(a) Securely connect the electrodes of the cardiac monitor to the condemned person; and

(b) Ensure the equipment is functioning.

(9) Counsel assigned by the Cabinet and counsel assigned by the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.

(10) The viewing curtain shall be opened.

(11) The Warden shall announce the execution to the witnesses.

(12) The Warden shall ask the condemned person if he wants to make a final statement. If a statement is made by the condemned person, it shall be limited to two (2) minutes. The witnesses shall be allowed to hear the condemned person's statement.

(13) The Warden shall order the execution to proceed.

Section 2. Sequence of Chemicals. (1) A designated execution team member shall begin a rapid flow of lethal chemicals in the following sequence:

(a) Three (3) gm of Sodium Thiopental;

(b) Twenty-five (25) milligrams of Saline;

(c) Fifty (50) milligrams of Pancuronium Bromide;

(d) Twenty-five (25) milligrams of Saline;

(e) 240 milliequivalents of Potassium Chloride; and

(f) Twenty-five (25) milligrams of Saline.

(2) If it appears to the Warden that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the Warden shall stop the flow of Sodium Thiopental in the primary site and order that the backup IV be used with a new flow of Sodium Thiopental.

(3) A designated execution team member shall start a stopwatch once the lethal injections are complete.

(4) A designated execution team member shall:

(a) Observe the heart monitor; and

(b) Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.

(5) The viewing curtain shall be drawn before the:

(a) Coroner enters the chamber to declare death; and

(b) Physician enters the chamber to certify the cause of death.

(6) The Warden shall order an additional set of lethal chemicals to be administered if the:

(a) Heart monitor does not indicate a flat line after ten (10) minutes;

(b) Coroner is not able to declare death; and

(c) Physician unable to certify the cause of death during the ten (10) minute period.

(7) The process established in subsection (1) of this section shall continue until death has occurred.

Section 3. Post Lethal Injection Steps. (1) If the Coroner declares death, the Warden shall be informed.

(2) The Warden shall announce the completion of the execution to the witnesses. The viewing curtain shall be open during the Warden's announcement.

(3) The witnesses shall be escorted out of the witness room.

Section 4. Stabilization Procedure. (1) Before an execution commences:

(a) The Warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and

(b) A medical crash cart and defibrillator shall be located in the execution building.

(2) If the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 29, 2010 at 9 a.m. in the Kentucky Transportation Building's Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 February 1, 2010. 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: Amy V. Barker, Assistant General Counsel, Department of Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the protocol for conducting an execution by lethal injection.

(b) The necessity of this administrative regulation: KRS Chapter 431.220 establishes lethal injection as one of the methods of carrying out the death penalty. KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the process for carrying out an execution by lethal injection.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation establishes the lethal injection process, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-

trative regulation establishes a clear procedure for execution by lethal injection in this Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Except for the Department of Corrections personnel, none of the entities listed above will to have take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in Bowling v. Kentucky Department of Corrections, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately $17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately $17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in Bowling v. Kentucky Department of Corrections, -S.W.3d-, 2009 WL 4117353 (Ky.).

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? The promulgation of this administrative regulation will not generate any revenue for the Department of Corrections.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, and $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of

this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-): The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(New Administrative Regulation)

501 KAR 16:340. Electrocution Protocol.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 - 431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocol for execution by electrocution.

Section 1. Preliminary Steps. (1) The condemned person's head and one (1) leg shall be shaved on the day of the execution.

(2) The Warden shall order the condemned person escorted to the execution chamber and strapped in the chair.

(3) The Warden shall order the viewing curtain opened.

(4) The Warden shall announce the execution to the witnesses.

(5) The Warden shall ask the condemned person if he wants to make a final statement. If a statement is made by the condemned person, it shall be limited to two (2) minutes. The witnesses shall be allowed to hear the condemned person's statement.(6) The Warden shall announce the final preparations for the execution to the witnesses.

(7) The viewing curtain shall be closed.

(8) The execution team members shall:

(a) Attach the chin strap to the condemned person;

(b) Attach the head gear to the condemned person;

(c) Attach the leg band to the condemned person;

(d) Adjust the back board;

(e) Make electrical connections to the condemned person's head and leg;

(f) Wipe any salt water from condemned person's head and leg; and

(g) Secure the condemned person's leather face covering.

(9) The Warden shall make a visual check of connections and straps.

(10) The execution team shall exit the execution chamber.

(11) The viewing curtain shall be opened.

(12) The Warden shall:

(a) Announce the execution of the condemned person to the witnesses; and

(b) Pull the face covering over the condemned person's face.

(13) All persons except the condemned person shall exit the execution chamber.

(14) Counsel assigned by the Cabinet and counsel assigned by the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.

Section 2. Execution. (1) The Warden shall order the execution to proceed.

(2) The execution equipment shall be activated for a two (2) minute cycle. The cycle shall consist of:

(a) 1600 - 2400 volts for a period of fifteen (15) seconds; and

(b) 240 volts for the remainder of the two (2) minute cycle.

(3) At the end of the two (2) minute cycle:

(a) The viewing curtain shall be closed; and

(b) The Warden shall observe the condemned person for signs of life for five minutes, which at a minimum shall include pulse and respiration.

(4) If the Warden observes signs of life during the five (5) minute observation period:

(a) The viewing curtain shall be opened; and

(b) The Warden shall order the execution cycle stated in subsection (2) of this section be repeated.

(5) If the Warden observes signs of life again, the execution steps in subsections (3) and (4) of this section shall be repeated until death.

(6) If the Warden does not observe signs of life:

(a) The coroner shall check the condemned person to declare death, which at a minimum, shall include pulse and pupils; and

(b) The physician shall certify the cause of death.

Section 3. Post Execution Steps. (1) The Warden shall announce the completion of the execution to the witnesses. The viewing curtain shall be open during the Warden's announcement.

(2) The witnesses shall be escorted out of the witness room.

Section 4. Stabilization Procedure. (1) Before an execution commences:

(a) The Warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and

(b) A medical crash cart and defibrillator shall be located in the execution building.

(2) If the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: December 15, 2009

FILED WITH LRC: December 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 29, 2010 at 9 a.m. in the Kentucky Transportation Building's Auditorium, 200 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 February 1, 2010. 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: Amy V. Barker, Assistant General Counsel, Department of Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the

protocol for conducting an execution by electrocution.

(b) The necessity of this administrative regulation: KRS Chapter 431.220 establishes electrocution as one of the methods of carrying out the death penalty. KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and the Department of Corrections to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet and the government and discipline of penitentiaries and official conduct of all officials connected with the penitentiary. This administrative regulation is necessary for the Department to establish the process for carrying out an execution by electrocution.

(c) How this administrative regulation conforms to the content of the authorizing statutes:
This administrative regulation establishes the process for execution by electrocution, the promulgation of which is authorized by KRS 196.035 and 197.020.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a clear procedure for execution by electrocution in this Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation establishes procedures that are primarily applicable only to personnel of the Department of Corrections. However, all executions are performed at the Kentucky State Penitentiary in Eddyville and other individuals and state and local government agencies are affected. There are currently thirty-five inmates on Kentucky's death row who may be affected by this administrative regulation. There are approximately 600 persons employed by the Department of Corrections who will be affected. There are approximately 15 witnesses from the news media, victim's family, inmate's family, and sheriff's department of the county of conviction that will be affected. Additionally, the following agencies and some of their employees will be affected: Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiner, Lyon County Sheriff's Office, the Kuttawa Fire Department, the Eddyville Fire Department, the Lyon County Coroner, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Except for the Department of Corrections personnel, none of the entities listed above will have to take any action to comply with this administrative regulation. Department of Corrections employees will be trained to comply with it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Again, this administrative regulation is primarily applicable only to personnel of the Department of Corrections. However, other individuals and state and local government agencies are affected by the Execution process. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. Additionally, the cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will assist in placing the Department of Corrections in compliance with the recent decision of the Supreme Court of Kentucky in Bowling v. Kentucky Department of Corrections, -S.W.3d-, 2009 WL 4117353 (Ky.). Further, it will assist personnel of the Department of Corrections in the administration of their duties during an execution.

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

(a) Initially: This administrative regulation is promulgated in compliance with a recent Supreme Court of Kentucky decision. The execution process has been in effect for many years, so this process will not be newly implemented. The current cost to conduct an execution is approximately $17,000.

(b) On a continuing basis: Each execution is estimated to cost approximately $17,000.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Tax dollars designated to the Department of Corrections, via the biennial budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This regulation impacts how the Kentucky Department of Corrections operates, but should not necessitate an increase in funding in addition to what is currently budgeted to the Department of Corrections. No fees are involved.

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2.What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will primarily impact the Kentucky Department of Corrections and Kentucky State Penitentiary. However, the Kentucky State Police, Kentucky Department of Fish and Wildlife, Kentucky National Guard, Kentucky State Medical Examiners Office, Lyon County Sheriff's Office, Lyon County Coroner, Eddyville Fire Department, and Kuttawa Fire Department, Office of the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service will also be impacted during the execution process.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020. Further, this administrative regulation is authorized under the recent Supreme Court of Kentucky decision in Bowling v. Kentucky Department of Corrections, -S.W.3d-, 2009 WL 4117353 (Ky.).

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? The promulgation of this administrative regulation will not generate any revenue for the Department of Corrections.

(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 promulgation of this administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No new programs are created. The promulgation of this

administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The promulgation of this administrative regulation should not increase costs. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the cost will be approximately $17,000 for the Department of Corrections, $2,200 for the Kentucky State Police, $450 for the Kentucky Department of Fish and Wildlife, $2,000 for the Office of the Kentucky State Medical Examiner, and $500 for the Lyon County Sheriff's Office. The Kuttawa and Eddyville Fire Departments will be on standby and this cost is unknown. The cost for Kentucky National Guard personnel, the Commonwealth's Attorney for Lyon County, and the Lyon County Ambulance Service is unknown.

(d) How much will it cost to administer this program for subsequent years? No new programs are created. The promulgation of this administrative regulation relates to the procedures by which the Kentucky Department of Corrections will conduct executions, but does not increase costs from what was previously budgeted to the Department of Corrections. The other entities listed in the response to Question #2 above should also not see any increase in costs. Executions are very rarely performed. In the event that an execution is carried out, it is estimated that the costs for each entity involved will be that set out in subparagraph (c) above.

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

Revenues (+/-): None

Expenditures (+/-): The Kuttawa and Eddyville Fire Departments, Commonwealth's Attorney for Lyon County, and Lyon County Ambulance Service will be on standby and costs are unknown. An exact cost for Kentucky National Guard personnel is also unknown.

Other Explanation: None

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(New Administrative Regulation)

601 KAR 1:220. Theft of motor fuel; procedures to obtain motor vehicle record.

RELATES TO: KRS 61.874(3), 187.310, 411.402, 411.406; 18 U.S.C. 2721

STATUTORY AUTHORITY: KRS 411.406

NECESSITY, FUNCTION, AND CONFORMITY: KRS 411.406 requires the cabinet to promulgate administrative regulations to implement procedures by which a motor fuel retailer or association of motor fuel retailers may obtain the name and mailing address of a vehicle owner who has been identified as having committed an offense under KRS 411.402. This administrative regulation establishes the procedures by which a motor fuel retailer or association of motor fuel retailers may obtain the name and mailing address of a vehicle owner who has been identified as having committed an offense under KRS 411.402.

Section 1. Procedures for Obtaining Motor Vehicle Record. (1) A motor fuel retailer or association of motor fuel retailers who wish to obtain the name and mailing address of a vehicle owner who has violated KRS 411.402 shall submit a notarized Request for Motor Vehicle Record That Includes Personal Information, Transportation Cabinet Form 96-16 and ten (10) dollars to the Department of Vehicle Regulation, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622 for each request for information.

Section 2. Incorporation by Reference. (1) Form TC 96-16, "Request for Motor Vehicle Record That Includes Personal Information", November 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Vehicle Regulation, Division of Motor Vehicle Licensing, Second Floor, Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8a.m. to 4:30 p.m.

MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: December 14, 2009

FILED WITH LRC: December 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2010 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 this agency in writing five (5) 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 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 wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until the close of business January 31, 2010. 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) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: D. Ann DAngelo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures for a retailer or association of retailers to follow in order to obtain personal information from the cabinet regarding an offender of KRS 411.402.

(b) The necessity of this administrative regulation: KRS 411.406 requires the cabinet to promulgate an administrative regulation in order to establish procedures by which a retailers or association of retailers may obtain the names and addresses of persons who violate KRS 411.402.

(c) How this administrative regulation conforms to the content of the authorizing statues: This administrative regulation establishes procedures as required by the authorizing statute KRS 411.406.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that retailers and associations of retailers are aware of the procedures they must follow in order to obtain personal information of offenders of KRS 411.402.

(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:

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

(d) How the amendment will assist in the effective administration of the statutes: The regulation will set forth the procedures to follow as required by the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Retailers and associations of retailers who sell motor fuel to the public; Division of Motor Vehicle Licensing at the Transportation Cabinet; Open Records Custodian for the Transportation Cabinet.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A retailer or association of retailers will submit TC Form 96-16 and $10 per request to the Division of Motor Vehicle Licensing at the cabinet.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A $10 fee is required for all requests for commercial purposes.

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3): A retailer or association of retailers will be able to access personal information about those persons who commit an offense under KRS 411.402.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for 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: The current $2 charge for obtaining records that include personal information has been raised to $10 for all requests that are to be used for a commercial purpose. The charge for obtaining records used for a non commercial purpose is 10 cents per page in accordance with established Open Records law.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation increased a fee as stated in #7.

(9) TIERING: Is tiering applied? No. Any retailer or association of retailers who submit a TC Form 96-16 and fee should be able to obtain the information they are requesting.

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 Transportation Cabinet's Division of Motor Vehicle Licensing and the Open Records Custodian.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 18 U.S.C. 2721, KRS 411.402, 411.406.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. It is not anticipated that there will be a monetary 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? It is not anticipated that this regulation will generate additional revenue.

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

(c) How much will it cost to administer this program for the first year? There should not be any costs in implementing this regulation.

(d) How much will it cost to administer this program for subsequent years? There should not be any costs in subsequent years.

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

Revenues (+-)

Expenditures (+-)

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(New Administrative Regulation)

902 KAR 20:400. Limited services clinics.

RELATES TO: KRS 311.550(12), 314.011(7), 29 C.F.R. 1910.1030, 45 C.F.R. 160, 164

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216B.105 allows the cabinet to deny, revoke, modify, or suspend a license issued by the cabinet if it finds that there has been a substantial failure to comply with the provisions of KRS Chapter 216B or this administrative regulation. This administrative regulation establishes licensure requirements for the operation of and services provided by limited services clinics.

Section 1. Definitions. (1) "Advanced registered nurse practitioner" is defined by KRS 314.011(7).

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Clinic" means a limited services clinic.

(4) "Physician" is defined by KRS 311.550(12).

Section 2. Licensure Application and Fee. (1) An applicant for licensure as a limited services clinic shall complete and submit to the Office of the Inspector General an Application for License to Operate a Health Facility or Service, pursuant to 902 KAR 20:008, Section 2(1)(f).

(2) The initial and annual fee for licensure as a limited services clinic shall be $800.

Section 3. Scope of Operations and Services. (1) A limited services clinic shall:

(a) Be located in a nonmobile facility;

(b) Assure that limited health services as described in subsection (4) of this section are provided to patients exclusively at the facility's location;

(c) Not provide services to a child younger than twenty-four (24) months of age; and

(d) Provide appropriate referrals for each patient who requires care and treatment that is beyond the scope of services provided by the clinic.

(2) If a clinic is located within a retail location, the clinic shall have policies and procedures which ensure that clinic personnel do not promote the use of services provided by the host retail location.

(3) A clinic shall not:

(a) Treat a patient with a recurring or chronic illness; or

(b) Refill a prescription for a patient who requires continuity of care.

(4) Health care services provided by a clinic shall:

(a) Be limited to conditions that may be safely and efficiently treated on an outpatient basis; and

(b) Include assessment, diagnosis, treatment, or counseling concerning any of the following:

1. Upper respiratory infection;
2. Sinus infection;
3. Allergy symptoms;
4. Acute bronchitis;
5. Ear infection or ear ache;
6. Ear wax removal;
7. Sore throat;
8. Influenza, excluding pregnant women;
9. Cold;
10. Coughs;
11. Laryngitis;
12. Breathing treatments with nebulizer;

13. Nausea, diarrhea, and vomiting;
14. Fever, excluding patients who have had a fever longer than seventy-two (72) hours;
15. Early Lyme Disease;
16. Pink eye or stye;
17. Skin infection or skin condition, which may include insect bites, rashes, ringworm, poison oak or ivy, scabies, hives, or impetigo;
18. Minor burn;
19. Skin tag removal;
20. Head lice;
21. Scalp rash;
22. Swimmer's itch;
23. Athlete's foot;
24. Cold sores;
25. Shingles;
26. Tick or insect bites;
27. Abrasions;
28. Minor cut closure with liquid skin adhesive;
29. Splinter removal;
30. Sprains or strains;
31. Urinary infection for females only, age twelve (12) to sixty-five (65);
32. Physical examination, which may include a sports physical or camp physical, but shall exclude a school physical;
33. Pre-employment health screening;
34. Vaccinations for patients age sixteen (16) and older;
35. Blood pressure screening;
36. Cholesterol screening;
37. Finger-stick blood sugar testing;
38. Wart removal; or
39. Tuberculosis testing.

Section 4. Administration and Operation. (1) Licensee.
(a) A licensee shall be an entity or individual whose clinic:
1. Provides limited health care services as described by Section 3(4) of this administrative regulation; and
2. Is legally responsible for the clinic and for compliance with all federal, state, and local laws and regulations pertaining to the operation of the clinic.
(b) A licensee shall establish written policies for the administration and operation of the clinic.
(c) A licensee shall establish lines of authority and designate a clinic director who shall:
1. Be employed by or under contract with the licensee;
2. Be principally responsible for the daily operation of the clinic;
3. Maintain oversight of the clinical activities and administrative functions in the clinic; and
4. Be an advanced registered nurse practitioner or a physician.
(2) Policies.
(a) Administrative policies. A clinic shall have written administrative policies which shall:
1. Be maintained on the premises of the clinic or maintained in an electronic format, available for copying to a disk or printing at the clinic;
2. Be subject to review, inspection, and copying by the cabinet; and
3. Cover all aspects of the clinic's operation, including:
a. A description of organizational structure, staffing, and allocation of responsibility and accountability;
b. Clinical practice guidelines for diagnosing and treating patients in each of the service categories provided by the clinic to ensure the proper identification of patients whose needs are beyond the clinic's scope of services;
c. Guidelines for referring an individual whose needs exceed the clinic's services;
d. Policies and procedures for determining if physician consultation is required;
e. Policies and procedures for the guidance and control of personnel performances;
f. Procedures to be followed if the clinic performs any functions related to the storage, handling, and administration of drugs and biologicals; and
g. Procedures for the submission of a patient's written or verbal grievance to the clinic. The grievance process shall specify time frames for review of the grievance and the provision of a response.
(b) Patient rights policies.
1. A clinic shall:
a. Adopt written policies regarding the rights and responsibilities of patients;
b. Display publicly at the clinic a copy of its written policy regarding the rights and responsibilities of patients; and
c. Provide a copy of the clinic's patients rights policies upon request by an individual who seeks services there.
2. A clinic's patient rights policies shall assure that each patient is:
a. Informed of services available at the clinic;
b. Has a right to information regarding the clinic's charge structure and whether the clinic accepts payment for the proposed services from third-party payors, including insurance, Medicare, or Medicaid;
c. Informed of his or her medical condition, unless medically contraindicated as documented in his or her medical record;
d. Afforded the opportunity to participate in the planning of his or her medical treatment;
e. Informed that he or she may voice a grievance or recommend changes in policies and services;
f. Assured confidential treatment of his or her records and is afforded the opportunity to approve or refuse the release of those records to an individual not involved in his or her care, except as required by third-party payment contract or otherwise permitted by applicable law; and
g. Treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in the care of his or her personal health needs.
(3) Personnel.
(a)1. During a clinic's operating hours, the clinic shall have present at least one (1) advanced registered nurse practitioner or physician.
2. The clinic shall employ additional staff or ancillary personnel as needed to ensure the safe and efficient delivery of services provided by the clinic.
(b)1. Clinic personnel shall attend in-service training programs relating to their respective job duties. These training programs shall include:
a. Thorough job orientation for new personnel; and
b. Regular in-service training programs, emphasizing competence and professionalism necessary for effective health care.
2. A written document describing the training programs completed by all clinic employees shall be maintained on the premises of the clinic.
(c) During a clinic's hours of operation, at least one (1) health care professional shall be at the clinic who has:
1. Training in basic cardiac life support for health care providers;
2. Certification with training in the use of an automated external defibrillator (AED); and
3. Training in the treatment of anaphylactic reaction.
(d) A clinic shall maintain a written job description for each position that shall be reviewed and revised as necessary.
(e) A clinic shall maintain current personnel records for each employee. An employee's personnel record shall include the following:
1. Employee's name, address, and social security number;
2. Evidence that the health care professional has a valid license or other valid credential required for the professional to be able to practice;
3. Record of training and experience; and
4. Record of performance evaluations.
(f)1. A clinic shall maintain the written materials required by this subsection on the premises of the clinic or maintain a scanned copy of the original materials in an electronic format, available for copying to a disk or printing at the clinic.
2. The materials shall be subject to review, inspection, and copying by the cabinet or its duly appointed representative.
(4) Medical records.
(a) A clinic shall maintain medical records that contain the following:

1. Medical history relevant to services provided by the clinic;

2. Description of each medical visit or contact, including a description of the:

a. Condition or reason for the visit or contact;

b. Assessment;

c. Diagnosis;

d. Services provided;

e. Medications and treatments prescribed; and

f. Disposition made;

3. Reports of physical examinations, laboratory, and other test findings; and

4. Documentation of referrals made, including the reason for the referral and to whom the patient was referred.

(b) A clinic shall maintain confidentiality of patient records at all times pursuant to and in accordance with federal, state and local laws and regulations including the privacy standard promulgated pursuant to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. 160 and 164.

(c) A clinic shall:

1. Establish systematic procedures to assist in continuity of care if the patient moves to another source of care;

2. Transfer medical records or an abstract upon request, subject to required releases and authorizations; and

3. Have a specific location designated for the storage and maintenance of the clinic's medical records or maintain scanned copies of the original medical records in an electronic format, available for copying to a disk or printing at the clinic.

(d) A licensee shall safeguard the clinic's medical records and their content against loss, defacement, and tampering.

(e) Medical records shall be maintained by the clinic for a period of six (6) years following the last treatment, assessment, or visit made by the patient, or three (3) years after the patient reaches age eighteen (18), whichever is longer.

(5) Quality assurance program. A clinic shall:

(a) Have a written quality assurance program that:

1. Includes effective mechanisms for reviewing and evaluating patient care; and

2. Provides for appropriate responses to findings; and

(b) Maintain a copy of the written quality assurance plan on the premises of the clinic.

Section 5. Provision of Services. (1) Posting requirements. A clinic shall post the following information on the door patients use to enter the clinic or prominently near the clinic's entrance:

(a) The clinic's hours of operation;

(b) The clinic's name; and

(c) A list of services provided by the clinic, accompanied by a statement which advises:

1. The patient to seek care from his or her practitioner or an emergency provider for all other complaints or conditions; and

2. That the clinic cannot provide emergency treatment.

(2) Visits. A clinic shall provide a copy of the medical record of each visit to the patient and, with the patient's consent, a facsimile or electronically transmitted copy of the medical record of the visit to the patient's primary care practitioner, provided at no charge to the patient.

(3) Referral. If an individual seeks or is in need of care and treatment in excess of services beyond the scope of limited services offered by the clinic, the clinic:

(a) Shall immediately advise the individual that he or she should seek services elsewhere; and

(b) May make a referral on behalf of the individual.

(4) Off hours coverage.

(a) A clinic shall make arrangements for the delivery of the services it provides during the hours when it is not open, which may include an answering service referring patients to another provider of the same services that is open at those hours.

(b) A clinic may provide a taped message that directs patients to a toll-free number that will enable the patient to speak directly with a practitioner.

(5) Equipment.

(a) Equipment used for direct patient care shall comply with the following:

1. The licensee shall establish and follow a written preventive maintenance program to ensure that equipment is operative and properly calibrated;

2. All personnel engaged in the operation of the equipment shall have adequate training and be currently licensed, registered, or certified in accordance with applicable state statutes and administrative regulations; and

3. A written plan shall be developed and maintained to provide for training of personnel in the safe and proper usage of the equipment.

(b) A clinic shall have an AED on-site.

Section 6. Compliance with Applicable Statutes and Regulations. Each health care professional who provides services at a clinic shall act at all times in compliance with:

(1) Obligations or requirements associated with his or her respective professional license or credential; and

(2) Applicable federal, state, and local laws and regulations including the privacy standard promulgated pursuant to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. 160 and 164.

Section 7. Physical and Sanitary Environment. (1) Accessibility. A clinic shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to federal, state, and local laws.

(2) Fire safety. A clinic shall be approved by the state Fire Marshal's office before licensure is granted by the cabinet.

(3) Physical location and overall environment.

(a) A clinic shall have at least one (1) exam room with a minimum floor area of eighty (80) square feet for each examination room, exclusive of fixed casework.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of patients, personnel, and visitors are assured.

(c) The premises shall have a waiting room or waiting area.

(d) The clinic shall develop written infection control policies that are consistent with Centers for Disease Control guidelines and include:

a. Prevention of disease transmission to and from patients, visitors, and employees, including:

i. Universal blood and body fluid precautions;

ii. Precautions against airborne transmittal of infections;

ii. Work restrictions for employees with infectious diseases; and

b. Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The clinic shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections.

(f) The clinic's facility, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from accumulation of dirt, rubbish, and foul, stale, or musty odors.

(g) Hazardous cleaning solutions, compounds, and substances shall be:

1. Labeled;

2. Stored in closed metal containers;

3. Kept separate from other cleaning materials; and

4. Kept in a locked storage area apart from the exam room.

(h) The clinic shall be kept free from insects and rodents, and their nesting places.

(i) Garbage and trash:

1. Shall be removed from the premises regularly; and

2. Containers shall be cleaned daily.

(j) A clinic shall establish and maintain a written policy for the handling and disposal of wastes, including any infectious, pathological, and contaminated wastes, which shall include the following:

1. Sharp wastes shall be segregated from other wastes and placed in puncture-resistant containers immediately after use.

2. A needle or other contaminated sharp shall not be recapped, purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by the Centers for Disease Control and the Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

3. A sharp waste container shall be incinerated on or off-site or

rendered nonhazardous.

4. Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.

(k)1. Disposable waste shall be:

a. Placed in a suitable bag or closed container so as to prevent leakage or spillage; and

b. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel or patients to waste materials.

2. The clinic shall establish specific written policies regarding handling and disposal of waste material.

(l)1. A clinic shall provide a handwashing facility with hot and cold water and blade type operating handles or knee or foot controls in each exam room.

2. A soap dispenser, disposable towels or electronic hand dryers, and a waste receptacle shall be provided at each handwashing sink.

(m)1. A clinic that is located on the premises of another entity may share toilet facilities with that entity.

2. If a clinic provides services in which a urine sample is needed, the clinic's toilet facilities shall be located within the clinic.

(n) A licensee owned or operated incinerator used for the disposal of waste shall be in compliance with all applicable Kentucky statutes and administrative regulations.

KERRY HARVEY, Esq., Acting Inspector General
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 11, 2009

FILED WITH LRC: December 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 21, 2010 at 9 a.m. in Meeting Room B, Health Services Building, Third Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 14, 2010, 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 February 1, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephanie Brammer-Barnes, 502-564-2888

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for licensure as a limited services clinic.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards for the operation of limited services clinics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 and 216B.105 by establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting forth the licensure requirements for limited services clinics.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect any entity that applies for licensure as a limited services clinic.

(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: Limited services clinics will be required to operate within a nonmobile facility, which may include an existing retail establishment; assure that at least one advanced registered nurse practitioner or physician is on duty at all times during the hours of operation; not provide services to children younger than 24 months; limit the provision of health care services to conditions which may be treated on an outpatient basis as described in Section 3(4) of this administrative regulation; and provide appropriate referrals for each patient who requires care and treatment that is beyond the scope of services provided by the clinic. Limited services clinics will also be required to maintain written administrative policies as described in Section 4(2), and have written policies regarding the rights and responsibilities of patients. Clinic personnel will be subject to in-service training relating to their respective job duties, and at least one health care professional at the clinic shall have training in Basic Cardiac Life Support for Health Care Providers, certification with training in the use of an automated external defibrillator, and training in the treatment of anaphylactic reaction. In addition, limited services clinics will be required to comply with the regulation's requirements for maintaining medical records, any equipment used for patient care, and meet the standards set for in the regulation for a safe physical environment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The initial and annual fee for licensure as a limited services clinic shall be $800.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An entity that demonstrates compliance with this administrative regulation will be approved for licensure as a limited services clinic.

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

(a) Initially: The cabinet anticipates 20 to 55 applicants during the first year. If 55 facilities are licensed by the cabinet as limited services clinics, it will cost approximately $60,000 during the first year of implementation.

(b) On a continuing basis: It will cost approximately $60,000 during the subsequent years of implementation. Costs will increase as clinics proliferate.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding used for the implementation and enforcement of this administrative regulation will be from licensure fees collected from limited services clinics and state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The initial and annual fee for licensure as a limited services clinic shall be $800.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes an initial and annual fee for licensure as a limited services clinic. Both the initial and annual licensure fee will be $800.

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any entity that applies for licensure as a limited services clinic.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042 and 216.105.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The cabinet will collect an initial fee of $800 from each applicant for licensure as a limited services clinic. The cabinet anticipates 20 to 55 applicants during the first year. Therefore, the cabinet may collect between $16,000 to $44,000 in licensure fees.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The cabinet will collect an annual licensure fee of $800 from each licensed limited services clinic. The cabinet anticipates there will be 20 to 55 licensed limited clinics within the next two years. Therefore, the cabinet may collect between $16,000 to $44,300 in licensure fees during subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet anticipates 20 to 55 applicants during the first year. If 55 facilities are licensed by the cabinet as limited services clinics, it will cost approximately $60,000 during the first year of implementation. The fees collected for licensure as a limited services clinic are not expected to completely offset the cost of implementation.

(d) How much will it cost to administer this program for subsequent years? It will cost approximately $60,000 during the subsequent years of implementation. Costs will increase as clinics proliferate. Additionally, the fees collected for licensure as a limited services clinic are not expected to completely offset the cost of implementation.

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:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of December 14, 2009

The December meeting of the Administrative Regulation Review Subcommittee was held on Monday, December 14, 2009 at 1:00 p.m., in Room 171 of the Capitol Annex. Representative Leslie Combs, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the November 2009 meeting were approved.

Present were:

Members: Senators David Givens and Elizabeth Tori and Representatives Leslie Combs, Robert Damron, and Jimmie Lee.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Chad Collins, Emily Harkenrider, Karen Howard, Emily Caudill, Jennifer Beeler, and Laura Napier.

Guests: Kathryn Gabhart, Sarah Bell Johnson, State Board of Elections; DeVon Hankins, Tom Howard, Travis Powell, Robert Ramsey, Finance and Administration Cabinet; Lee Harris, Kentucky Real Estate Commission; Kellie Ellis, Victoria Gnaff, Frances Short, Michael West, Board of Speech-Language Pathology and Audiology; Stacia Alford, Clint Quarles, Kentucky Department of Agriculture; Peter Goodman, Abby Powell, Julie Roney, EEC: Division of Water; Aaron Keatley, EEC: Division of Compliance Assistance; Sean Alteri, Laura Lund, Andrea Smith, EEC: Division for Air Quality; Steve Lynn, Jonathan Milby, Department of Corrections; Morgain Sprague, Mark Mangeot, Kentucky State Police; Ann D'Angelo, Kim Jenkins, Godwin Onodu, Willie Payton, Rick Taylor, Tom Zawacki, Transportation Cabinet; Dawn Bellis, Department of Housing, Buildings and Construction; Shane O'Donley, Office of Health Policy; Lee Barnard, Stuart Owen, Department for Medicaid Services; Elizabeth Caywood, Mike Grimes, Department for Community Based Services; Virgie Clayton, Shirley Eldridge, Department for Aging and Independent Living; Gail Amburgey, Division of Family Support.

The Administrative Regulation Review Subcommittee met on Monday, December 14, 2009, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY STATE BOARD OF ELECTIONS: Statewide Voter Registration

31 KAR 3:010. Current address of Kentucky registered voters and distribution of voter registration lists. Kathryn Gabhart, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 3 through 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to revise the form incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

FINANCE AND ADMINISTRATION CABINET: Kentucky Private Activity Bond Allocation Committee

200 KAR 15:010. Formula for allocation of private activity bonds. Tom Howard, executive director, and Travis Powell, deputy general counsel, represented the committee.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 3, 11, 12, and 13 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Kentucky Real Estate Commission: Commission

201 KAR 11:250. Listing and purchase contracts and other agreements entered into by licensees; provisions required; seller-initiated relisting request disclosure form. Lee Harris, general counsel, represented the commission.

In response to a question by Representative Damron, Ms. Harris stated that 201 KAR 11:190 was the administrative regulation with which stakeholders had remaining concerns and that administrative regulation had been deferred to the January 2010 meeting.

In response to a question by Co-Chair Combs, Ms. Harris stated that Representative Ford's questions had all been addressed.

A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to clarify that prior to the expiration of a listing agreement, a seller: (a) may be contacted about a relisting agreement by the seller's own broker, or sales associate of that broker; (b) cannot be contacted by another broker about a subsequent listing agreement; and (c) may initiate contact himself with another broker about a subsequent listing agreement; and (2) to amend the RELATES TO paragraph and Sections 1, 2, 4, 5, and 6 to correct statutory citations 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.

Board of Speech-Language Pathology and Audiology: Board

201 KAR 17:011. Requirement for interim licensure as a Speech Language Pathologist. Kellie C. Ellis, acting board chair; Dr. Victoria Gnaff, speech language audiologist; and Michael West, assistant attorney general, represented the board.

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; (2) to amend Section 1 to specify the accredited programs, the documentation required to be submitted with the Application for Interim License, and the criteria for granting an extension of the postgraduate professional experience; and (3) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 17:012. Requirements for licensure of a Speech-Language Pathologist.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to specify accredited programs; and (4) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 17:025. Requirements for an interim license as a Speech-Language Pathology.

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; (2) to amend Section 1 to specify accredited programs; (3) to amend Section 3 to specify criteria for granting an extension of the postgraduate professional experience; and (4) 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.

201 KAR 17:027. Supervision requirements and caseload limitations of Speech-Language Pathology Assistants.

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; (2) to amend Sections 6 and 8 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to establish a new Section 10 to delineate caseload requirements. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 17:030. License fees and renewal 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 Section 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 17:032. Requirements for interim licensure as an Audiologist.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to insert a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to specify accredited programs and criteria for granting an extension of the postgraduate professional experience; and (4) to amend the Title, the RELATES TO and STATUTORY AUTHORITY paragraphs, and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 17:034. Requirements for licensure as a Speech-Language Pathology Assistant.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend the Title, the RELATES TO paragraph, and Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 17:036. Requirements for licensure for an Audiologist.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend the Title and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 17:038. Caseload limitations.

In response to questions by Representative Damron, Ms. Ellis stated that the caseload cap was the same; therefore, no fiscal impact was expected. She also stated that licensees had been thoroughly notified of the changes to program requirements that were proposed in these administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to delete a statutory citation; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend the Title, the STATUTORY AUTHORITY paragraph, and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 17:041. Professional code of ethics.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 17:090. Continuing 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 5, 7, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 17:100. Clinical practice by licensed speech-language pathologists and audiologists in the area of minor training.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

DEPARTMENT OF AGRICULTURE: Office of Agriculture Marketing and Promotion: Marketing and Product Promotion

302 KAR 39:020. Kentucky Small Farm Wineries Support Fund. Stacia Alford, marketing specialist, and Clint Quarles, staff attorney, represented the office.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply

401 KAR 8:030. Water treatment plant and water distribution system classification and staffing. Peter Goodmann, assistant director, and Julie W. Roney, drinking water coordinator, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) make technical corrections; and (2) clarify requirements. Without objection, and with agreement of the agency, the amendments were approved.

Division of Compliance Assistance: Certified Operators

401 KAR 11:001. Definitions for 401 KAR Chapter 11. Aaron Keatley, director, represented the division.

In response to a question by Co-Chair Combs, Mr. Keatley stated that the administrative regulations were applicable statewide and were based on statute. He stated that the existing requirements were being consolidated into Chapter 11.

401 KAR 11:010. Boards of certification.

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

401 KAR 11:030. Wastewater treatment and collection system operators, classification and qualifications.

A motion was made and seconded to approve the following amendments: to amend Section 2 to make technical formatting corrections. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 11:040. Water treatment and distribution system operators, classification and qualifications.

A motion was made and seconded to approve the following

amendments: to amend Section 2 to make technical formatting corrections. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 11:050. Operator certification.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division for Air Quality: Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:001 & E. Definitions for 401 KAR Chapter 51. Sean Alteri, assistant director, and Andrea Smith, branch manager, represented the division.

In response to a question by Representative Damron, Mr. Alteri stated that these administrative regulations did not affect local governments' ability to burn storm debris because those requirements were established in 401 KAR 63:005.

A motion was made and seconded to approve the following amendment: to amend Section 1(118) to correct a citation format. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 51:017 & E. Prevention of significant deterioration of air quality.

In response to a question by Senator Givens, Mr. Alteri stated that the requirement for a major source that emits more than 100 tons of nitrogen oxides per year to conduct ambient air quality analysis for ozone applied only if there was a new facility or a facility modification. He also stated that currently the division was aware of approximately eight (8) permit reviews that may be impacted by this requirement.

401 KAR 51:052 & E. Review of new sources in or impacting upon nonattainment areas.

A motion was made and seconded to approve the following amendment: to amend Section 5(1) to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:020 & E. Corrections policies and procedures. Steve Lynn, assistant general counsel, and Jonathan Milby, staff attorney, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend CPP 1.2 to delete the procedures for news media during an execution as the procedures are being moved to another administrative regulation; (2) to amend CPP 19.3 to reflect current practices of the department; (3) to amend CPP 15.4 to limit the time credit for program completion to drug and other treatment programs, as required by the current budget bill, 2008 Ky. Acts ch.127; and (4) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:999 & E. Corrections secured policies and procedures.

This administrative regulation was reviewed and amended, without objection and with agreement of the agency, by the Subcommittee in closed session pursuant to KRS 61.810(1)(k), 61.815(2), and 197.025(6).

Department of Kentucky State Police: Technical Services Division: Polygraph

502 KAR 20:020. Detection of deception examiners. Morgain Sprague, legal counsel, represented the department.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Drivers License: Certification of Title

601 KAR 23:010. Classic motor vehicle project. Ann D'Angelo, assistant general counsel, and Godwin Onodu, assistant director, represented the division. Steve Lynn, classic motor vehicle owner, appeared in support of this administrative regulation.

In response to questions by Co-Chair Tori, Mr. Onodu stated that a classic motor vehicle project was one that pertains to a vehicle: (1) at least twenty-five (25) years old; (2) that had not been branded salvaged or rebuilt; and (3) that was not currently titled in Kentucky. He stated that these were not roadworthy vehicles and that, at the time they became roadworthy, they would be eligible for a regular motor vehicle title. He added that a statutory change would be required to make getting a title easier in Kentucky.

In response to questions by Representative Lee, Mr. Onodu stated that an existing roadworthy vehicle was not eligible for a classic motor vehicle project title, but that the owner may apply for a historic vehicle sticker. He stated that a classic motor vehicle project title expired once a vehicle became roadworthy.

Mr. Lynn stated that he had been in the process of completing a 1965 Mustang restoration and that he had applied for and received a classic motor vehicle project title. He stated that the process seemed smooth and that the classic motor vehicle project title was more desirable than a salvage or rebuilt title.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to amend Section 2 to clarify that the application form shall be notarized; and (4) to revise the application form incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings, and Construction: Division of Building Code Enforcement: Kentucky Building Code

815 KAR 7:070. The Kentucky Certified Building Inspector Program. Dawn Bellis, general counsel, represented the division.

In response to a question by Co-Chair Tori, Ms. Bellis stated that the administrative regulation did not increase building costs.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add 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 Section 1 to insert a definition for "ICC test module"; (4) to amend Sections 1 through 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to amend Section 3 to clarify annual continuing education requirements. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Certificate of Need

900 KAR 6:030. Certificate of need expenditure minimums. Shane O'Donley, policy advisor, represented the office.

Department for Medicaid Services: Division of Medical Management: Medicaid Services

907 KAR 1:715. School-based health services. Lee Barnard, assistant director, and Stuart Owen, regulation coordinator, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:060 & E. Federal Title IV-E adoption assistance. Elizabeth Caywood, policy analyst, and Mike Grimes, adoption manager, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 6 for clarification 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.

Department for Aging and Independent Living: Division of Guardianship: Adult Services

922 KAR 5:061. Repeal of 922 KAR 5:060. Virgie Clayton, branch manager, and Shirley Eldridge, internal policy analyst III, represented the division.

Department for Community Based Services: Division of Family Support: Community Action Agencies

922 KAR 6:010 & E. Standards. Elizabeth Caywood, policy analyst, represented the division.

In response to questions by Representative Damron, Ms. Caywood stated that the division reviewed community budgets and conducted annual on-site audits. She stated that the division also reviewed board meeting minutes. She added that the community action agencies had a certain amount of autonomy, but that specific concerns may warrant investigation by the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add relevant definitions; (2) to amend Section 7 to specify monitoring and evaluation procedures; and (3) to amend Sections 1, 4, 6, and 7 for clarification 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.

Other Business: Dave Nicholas, committee staff administrator, apprised ARRS members of two (2) recent court opinions that may affect administrative regulations.

The following administrative regulations were deferred to the January 11, 2010, meeting of the Subcommittee:

COUNCIL ON POSTSECONDARY EDUCATION: Nonpublic Colleges

13 KAR 1:040. Definitions for independent colleges.

PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified

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

FINANCE AND ADMINISTRATION CABINET: Office of the Secretary: Purchasing

200 KAR 5:315. Suspension.

GENERAL GOVERNMENT CABINET: Kentucky Real Estate Commission: Commission

201 KAR 11:190. Disciplinary proceedings.

Board of Barbering: Board

201 KAR 14:056. Repeal of 201 KAR 14:055.

Board of Podiatry: Board

201 KAR 25:012 & E. Licensing examinations.

Board of Licensed Professional Counselors: Board

201 KAR 36:060. Qualifying experience under supervision.

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

301 KAR 2:142. Spring wild turkey hunting.

Hunting and Fishing

301 KAR 3:022. License, tag, and permit fees.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Waste Management: Solid Waste Facilities

401 KAR 47:090. Solid waste permit fees.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Drivers License: Driver's License

601 KAR 12:060. Hardship driver's license.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Division of Licensing: Thoroughbreds

810 KAR 1:025 & E. Licensing thoroughbred racing.

810 KAR 1:034 & E. Licensing of racing association.

Harness Racing

811 KAR 1:034 & E. Licensing of racing associations.

811 KAR 1:070 & E. Licensing standardbred racing.

The subcommittee adjourned at 2:05 p.m. until January 11, 2010.

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 NATURAL RESOURCES AND ENVIRONMENT
Meeting of December 11, 2009

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Environment for its meeting of December 11, 2009, having been referred to the Committee on December 2, 2009, pursuant to KRS 13A.290(6):

301 KAR 1:015
301 KAR 2:225 & E
805 KAR 5:030
805 KAR 7:060
805 KAR 8:060

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 December 11, 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 G - 2

The Locator Index lists all administrative regulations published in VOLUME 36of 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 G - 11

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 None

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 G - 20

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.

Regulation Number	35 Ky.R. Page No.	Effective Date

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.)

Regulation Number	35 Ky.R. Page No.	Effective Date
101 KAR 2:066E		
Resubmitted	*F*-1710	1-9-09
103 KAR 3:030E	2635	5-14-09
Replaced		(See 36 Ky.R.)
105 KAR 1:130E	2385	4-15-09
Replaced		(See 36 Ky.R.)
200 KAR 6:070E	2199	2-17-09
Replaced		(See 36 Ky.R.)
200 KAR 14:011E	2200	2-19-09
Replaced	2664	7-6-09
200 KAR 15:010E	1984	2-2-09
Expired		8-1-09
201 KAR 21:090E	2645	5-12-09
Replaced		(See 36 Ky.R.)
201 KAR 37:010E	2646	5-7-09
Replaced		(See 36 Ky.R.)
302 KAR 16:111E	1986	2-13-09
Replaced	2429	6-5-09
505 KAR 1:100E	*F*-1721	1-15-09
Replaced	2741	7-6-09
735 KAR 1:010E	2387	4-7-09
Replaced		(See 36 Ky.R.)
735 KAR 1:020E	2391	4-7-09
Replaced		(See 36 Ky.R.)
787 KAR 1:330E	2648	4-17-09
Withdrawn		7-10-09
806 KAR 18:090E	2395	3-13-09
Expired		9-9-09
811 KAR 2:120E	*F*-1722	12-31-08
Replaced	2743	7-6-09
907 KAR 1:028E	2650	5-7-09
Replaced		(See 36 Ky.R.)
907 KAR 1:901E(r)	2653	5-7-09
Expired		11-3-09

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	35 Ky.R. Page No.	Effective Date
10 KAR 7:010		
Amended	1237	
Withdrawn		12-16-08
Amended	2464	(See 36 Ky.R.)
10 KAR 7:020		
Amended	2466	(See 36 Ky.R.)
11 KAR 4:080		
Amended	2314	
Amended	2315	(See 36 Ky.R.)
11 KAR 5:200		
Amended	2315	(See 36 Ky.R.)
11 KAR 18:010		
Amended	2317	(See 36 Ky.R.)
16 KAR 5:010		
Amended	2321	
As Amended	2655	6-8-09
101 KAR 2:066		
Amended	*F*-1815	
103 KAR 3:010		
Amended	2468	(See 36 Ky.R.)
103 KAR 3:030		
Amended	2775	(See 36 Ky.R.)
105 KAR 1:130		
Amended	2472	(See 36 Ky.R.)
200 KAR 5:315		
Amended	2779	(See 36 Ky.R.)
200 KAR 5:380		
Amended	2331	
As Amended	2663	7-6-09
200 KAR 6:070	2371	
Amended	2764	(See 36 Ky.R.)
200 KAR 14:011		
Amended	2332	
As Amended	2664	7-6-09
200 KAR 17:010		
Amended	2474	(See 36 Ky.R.)
201 KAR 1:065		
Amended	2781	(See 36 Ky.R.)
201 KAR 1:100		
Amended	2782	(See 36 Ky.R.)
201 KAR 2:045		
Amended	2484	(See 36 Ky.R.)
201 KAR 2:320	2832	(See 36 Ky.R.)
201 KAR 10:050		
Amended	*F*-1834	7-6-09
201 KAR 16:015		
Amended	*J*-1854	10-2-09
201 KAR 18:115		
Amended	2335	
Amended	2765	7-31-09
201 KAR 18:142		
Amended	2337	
Amended	2768	(See 36 Ky.R.)
201 KAR 20:056		
Amended	2787	8-12-09
201 KAR 20:057		
Amended	2790	8-12-09
201 KAR 20:162		
Amended	2791	8-12-09
201 KAR 20:225		
Amended	2340	
As Amended	2666	6-11-09
201 KAR 20:260		
Amended	2793	(See 36 Ky.R.)
201 KAR 20:270		
Amended	2341	
As Amended	2667	6-11-09
201 KAR 20:290		
Amended	2343	
As Amended	2668	6-11-09
201 KAR 20:360		
Amended	2346	(See 36 Ky.R.)
201 KAR 21:090		
Amended	2796	(See 36 Ky.R.)
201 KAR 21:095		
Amended	2126	
Amended	2770	(See 36 Ky.R.)
201 KAR 22:045		
Amended	2485	(See 36 Ky.R.)
201 KAR 30:040		
Amended	2487	7-31-09
201 KAR 32:025		
Amended	*J*-1866	
As Amended	2414	7-31-09
201 KAR 32:030		
Amended	*J*-1863	
As Amended	2415	7-31-09
201 KAR 37:010		
Amended	2798	(See 36 Ky.R.)

Regulation Number	35 Ky.R. Page No.	Effective Date
300 KAR 7:010	2834	(See 36 Ky.R.)
301 KAR 1:201		
Amended	2488	7-30-09
301 KAR 2:111		
Amended	2349	
As Amended	2670	7-6-09
301 KAR 2:132		
Amended	2799	8-28-09
301 KAR 2:172		
Amended	2351	
As Amended	2671	7-6-09
301 KAR 2:178		
Amended	2354	
As Amended	2673	7-6-09
302 KAR 100:030	2836	(See 36 Ky.R.)
401 KAR 5:002		
Amended	2493	(See 36 Ky.R.)
401 KAR 5:005		
Amended	2507	9-25-09
401 KAR 5:055		
Amended	2520	(See 36 Ky.R.)
401 KAR 5:060		
Amended	2526	9-25-09
401 KAR 5:065		
Amended	2551	9-25-09
401 KAR 5:080		
Amended	2559	9-25-09
401 KAR 8:010		
Amended	2804	(See 36 Ky.R.)
401 KAR 8:022		
Amended	2806	(See 36 Ky.R.)
401 KAR 8:040		
Amended	*F*-1844	
As Amended	2677	7-6-09
401 KAR 8:050		
Amended	*F*-1847	7-6-09
401 KAR 8:075		
Amended	2808	(See 36 Ky.R.)
401 KAR 8:510		
Amended	2810	(See 36 Ky.R.)
401 KAR 8:600		(See 36 Ky.R.)
Amended	2812	
401 KAR 10:026		
Amended	129	
Amended	860	
As Amended	2679	7-6-09
401 KAR 10:029		
Amended	157	
Amended	904	
As Amended	2721	7-6-09
401 KAR 10:030		
Amended	161	
Amended	908	(See 36 Ky.R.)
401 KAR 10:031		
Amended	177	
Amended	930	
As Amended	2723	7-6-09
401 KAR 47:090		
Amended	2814	(See 36 Ky.R.)
401 KAR 101:001	*F*-1947	
As Amended	2733	7-6-09
401 KAR 101:010	*F*-1949	
As Amended	2734	7-6-09
401 KAR 101:020	*F*-1951	
As Amended	2735	7-6-09
401 KAR 101:030	*F*-1954	
As Amended	2737	7-6-09
401 KAR 101:040	*F*-1956	
As Amended	2738	7-6-09
500 KAR 2:010		
Repealed	2837	10-2-09
500 KAR 2:011	2837	10-2-09
500 KAR 2:020		
Amended	2817	(See 36 Ky.R.)
505 KAR 1:100		
Amended	*F*-1851	
Amended	2454	
As Amended	2741	7-6-09
702 KAR 4:160		
Amended	2142	(See 36 Ky.R.)
702 KAR 6:010		
Amended	2150	(See 36 Ky.R.)
702 KAR 6:020		
Amended	2151	(See 36 Ky.R.)
702 KAR 6:031*(r)*	2187	
702 KAR 6:040		
Amended	2152	(See 36 Ky.R.)
702 KAR 6:045		
Amended	2154	(See 36 Ky.R.)
702 KAR 6:075		
Amended	2155	(See 36 Ky.R.)
702 KAR 6:090		
Amended	2157	(See 36 Ky.R.)
702 KAR 7:065		
Amended	2158	(See 36 Ky.R.)
702 KAR 7:130	483	
As Amended	1461	1-5-09
735 KAR 1:010		
Amended	2565	(See 36 Ky.R.)
735 KAR 1:020		
Amended	2570	(See 36 Ky.R.)
780 KAR 1:010		
Amended	1891	(See 36 Ky.R.)
806 KAR 17:480		
Amended	1607	
Amended	2081	
As Amended	2742	7-6-09
810 KAR 1:009		
Amended	2573	(See 36 Ky.R.)
810 KAR 1:025		
Amended	1610	
Withdrawn		7-17-09
810 KAR 1:026		
Amended	2577	(See 36 Ky.R.)
811 KAR 1:070		
Amended	1617	
811 KAR 2:120		
Amended	*F*-1914	
As Amended	2743	7-6-09
815 KAR 7:120		
Amended	2359	
Amended	2772	(See 36 Ky.R.)
815 KAR 7:125		
Amended	2362	(See 36 Ky.R.)
815 KAR 10:060		
Amended	2364	(See 36 Ky.R.)
815 KAR 20:020		
Amended	2582	(See 36 Ky.R.)
815 KAR 20:060		
Amended	2586	(See 36 Ky.R.)
815 KAR 20:070		
Amended	2588	(See 36 Ky.R.)
815 KAR 20:071		
Amended	2591	(See 36 Ky.R.)
815 KAR 20:074		
Amended	2593	(See 36 Ky.R.)
815 KAR 20:077		
Repealed	2624	7-29-09
815 KAR 20:079*(r)*	2624	7-29-09
815 KAR 20:090		

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Amended	2594	(See 36 Ky.R.)
815 KAR 20:100		
Amended	2598	(See 36 Ky.R.)
815 KAR 20:120		
Amended	2601	(See 36 Ky.R.)
815 KAR 20:130		
Amended	2608	(See 36 Ky.R.)
815 KAR 20:170		
Amended	2612	(See 36 Ky.R.)
815 KAR 20:195		
Amended	2613	(See 36 Ky.R.)
815 KAR 25:060		
Amended	2367	
As Amended	2746	7-6-09
900 KAR 5:020		
Amended	*F*-1918	
Amended	2455	(See 36 Ky.R.)
900 KAR 7:030	2838	(See 36 Ky.R.)
902 KAR 19:021	2842	8-12-09
902 KAR 47:200	2843	(See 36 Ky.R.)
902 KAR 55:110		
Amended	2615	7-31-09
907 KAR 1:028		
Amended	2822	(See 36 Ky.R.)
907 KAR 1:585		
Amended	1637	
Amended	*F*-1802	
As Amended	2747	7-6-09
907 KAR 1:645		
Amended	1640	
As Amended	2749	7-6-09
907 KAR 1:650		
Amended	1644	
As Amended	2751	7-6-09
907 KAR 1:655		
Amended	1649	
As Amended	2754	7-6-09
907 KAR 3:170		
Amended	*F*-1923	
Amended	2456	
As Amended	2757	7-6-09
908 KAR 3:050		
Amended	2618	7-31-09
908 KAR 3:060		
Amended	2620	7-31-09
911 KAR 2:200		
Amended	2825	(See 36 Ky.R.)

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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.)

13 KAR 2:045E	971	10-11-09
101 KAR 2:066E	275	7-8-09
101 KAR 2:102E	277	7-10-09
Replaced	1002	12-4-09
101 KAR 2:210E	719	9-15-09
Replaced	1194	1-4-10
101 KAR 3:015E	282	7-15-09
Replaced	1006	12-4-09
103 KAR 3:030		(See 35 Ky.R.)
Replaced	310	9-4-09
103 KAR 5:180E	1163	11-13-09
103 KAR 5:190E	1166	11-13-09
103 KAR 17:150E	533	7-23-09
Replaced	1011	12-4-09
103 KAR 44:130	535	8-14-09
Replaced	1012	12-4-09
105 KAR 1:130E		(See 35 Ky.R.)
Replaced	19	7-29-09
105 KAR 1:390E	4	6-15-09
Replaced	141	10-2-09
200 KAR 6:070E		(See 35 Ky.R.)
Replaced	20	7-29-09
201 KAR 12:105E	6	6-11-09
Replaced	1016	12-4-09
201 KAR 21:090E		(See 35 Ky.R.)
Replaced	568	9-16-09
201 KAR 25:012E	720	8-19-09
201 KAR 37:010		(See 35 Ky.R.)
Replaced	573	10-2-09
301 KAR 2:221E	1168	11-3-09
301 KAR 2:222E	1171	11-3-09
301 KAR 2:225E	721	8-28-09
Replaced	1199	12-11-09
307 KAR 8:010E	536	8-4-09
Replaced	1021	12-4-09
307 KAR 9:010E	724	8-20-09
Replaced	1201	1-4-10
401 KAR 51:001E	725	9-14-09
401 KAR 51:017E	738	9-14-09
401 KAR 51:052E	754	9-14-09
405 KAR 8:015E	1178	11-3-09
501 KAR 6:020E	767	9-11-09
501 KAR 6:999E	770	9-11-09
505 KAR 1:160E	1180	11-13-09
703 KAR 5:080E	8	6-15-09
Replaced	159	9-14-09
750 KAR 1:010E	1181	11-13-09
735 KAR 1:010E		(See 35 Ky.R.)
Replaced	65	7-13-09
735 KAR 1:020E		(See 35 Ky.R.)
Replaced	67	7-13-09
806 KAR 17:391E	287	6-25-09
Expired		12-23-09
806 KAR 17:570E	288	6-26-09
Replaced	1064	1-4-10
810 KAR 1:025E	537	7-20-09
Withdrawn		9-30-09
Resubmitted	975	9-30-09
810 KAR 1:034E	982	9-30-09
811 KAR 1:034E	986	9-30-09
811 KAR 1:070E	545	7-20-09
815 KAR 7:120E	990	10-01-09
815 KAR 20:050E	992	10-01-09
906 KAR 1:180E	1184	11-13-09
907 KAR 1:028E	820	(See 35 Ky.R.)
Replaced	330	8-12-09
907 KAR 3:183E	306	6-26-09
Replaced		11-6-09
921 KAR 2:017E	1190	11-2-09
922 KAR 1:060E	994	9-30-09

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922 KAR 6:010E	773	8-28-09
ORDINARY ADMINISTRATIVE REGULATIONS:		
10 KAR 7:010		(See 35 Ky.R.)
As Amended	10	7-31-09
10 KAR 7:020		(See 35 Ky.R.)
As Amended	12	7-31-09
11 KAR 3:100		
Amended	109	10-12-09
11 KAR 4:080	13	(See 35 Ky.R.)
As Amended		7-13-09
11 KAR 5:145		
Amended	123	10-12-09
Amended	1508	
11 KAR 5:200		(See 35 Ky.R.)
As Amended	13	7-13-09
11 KAR 8:030		
Amended	1510	
11 KAR 18:010		(See 35 Ky.R.)
As Amended	14	7-13-09
13 KAR 1:020		
Amended	826	
Amended	1232	
13 KAR 1:040	942	
13 KAR 1:050	943	
Amended	1241	
13 KAR 2:045		
Amended	1083	
16 KAR 2:010		
Amended	1294	
16 KAR 2:120		
Amended	1297	
16 KAR 2:200	1390	
16 KAR 7:010		
Amended	630	
As Amended	998	11-9-09
16 KAR 8:030		
Amended	125	
As Amended	553	9-14-09
31 KAR 2:010		
Amended	1087	
31 KAR 2:020	1141	
Amended	1499	
31 KAR 3:010		
Amended	1095	
As Amended	1434	
31 KAR 4:020		
Amended	1513	
31 KAR 4:030		
Amended	1515	
101 KAR 2:066		
Amended	414	
101 KAR 2:102		
Amended	416	
As Amended	1002	12-4-09
101 KAR 2:120		
Amended	420	
Withdrawn		12-07-09
Amended	1516	
101 KAR 2:210		
Amended	835	
As Amended	1194	1-4-10
101 KAR 3:015		
Amended	423	
As Amended	1006	12-4-09
102 KAR 1:310	703	
As Amended	1010	11-9-09
103 KAR 3:010		(See 35 Ky.R.)
As Amended	16	
103 KAR 3:020		
Amended	129	
As Amended	555	10-02-09
103 KAR 3:030		(See 35 Ky.R.)
As Amended	310	9-4-09
103 KAR 3:050		
Amended	134	
As Amended	560	10-02-09
103 KAR 5:180	1391	
103 KAR 5:190	1394	
103 KAR 15:110	1553	
103 KAR 15:120	1554	
103 KAR 15:140		
Amended	1519	
103 KAR 17:150	704	
As Amended	1011	12-4-09
103 KAR 18:110		
Amended	1522	
103 KAR 44:130	706	
As Amended	1012	12-4-09
105 KAR 1:130		(See 35 Ky.R.)
As Amended	19	7-29-09
105 KAR 1:390		
Amended	141	10-02-09
200 KAR 5:314		
Amended	1300	
200 KAR 5:315		(See 35 Ky.R.)
Amended	616	
200 KAR 6:070		(See 35 Ky.R.)
As Amended	20	7-29-09
200 KAR 15:010		
Amended	836	
As Amended	1435	
200 KAR 17:010		(See 35 Ky.R.)
As Amended	21	7-29-09
201 KAR 1:065		(See 35 Ky.R.)
As Amended	319	9-4-09
201 KAR 1:100		
Amended	2782	(See 35 Ky.R.)
As Amended	319	9-4-09
201 KAR 2:045		(See 35 Ky.R.)
As Amended	321	8-12-09
201 KAR 2:320		
Amended	618	
As Amended	778	10-21-09
201 KAR 10:050		
Amended	1301	
201 KAR 11:121		
Amended	429	
As Amended	1012	12-4-09
201 KAR 11:190		
Amended	430	
201 KAR 11:215	485	
As Amended	1013	12-4-09
201 KAR 11:230		
Amended	143	
As Amended	565	10-02-09
201 KAR 11:250		
Amended	433	
As Amended	1014	
As Amended	1436	
201 KAR 11:300		
Amended	434	
As Amended	1014	12-4-09
201 KAR 11:450		
Amended	435	
As Amended	1015	12-4-09
201 KAR 12:105		
Amended	147	
As Amended	1016	12-4-09
201 KAR 14:056 *(r)*	*1143*	

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201 KAR 14:105		
Amended	437	
As Amended	779	11-6-09
201 KAR 17:011		
Amended	839	
As Amended	1437	
201 KAR 17:012		
Amended	841	
As Amended	1438	
201 KAR 17:025		
Amended	843	
As Amended	1439	
201 KAR 17:027		
Amended	845	
As Amended	1441	
201 KAR 17:030		
Amended	847	
As Amended	1442	
201 KAR 17:032	948	
As Amended	1443	
201 KAR 17:034	950	
As Amended	1445	
201 KAR 17:036	951	
As Amended	1446	
201 KAR 17:038	952	
As Amended	1446	
201 KAR 17:041		
Amended	849	
As Amended	1447	
201 KAR 17:090		
Amended	851	
As Amended	1448	
201 KAR 17:100		
Amended	854	
As Amended	1450	
201 KAR 18:142		(See 35 Ky.R.)
As Amended	25	7-31-09
201 KAR 20:163		
Amended	1302	
201 KAR 20:230		
Amended	1304	
201 KAR 20:240		
Amended	527	
As Amended	780	10-21-09
201 KAR 20:260		(See 35 Ky.R.)
As Amended	322	8-12-09
201 KAR 20:360		(See 35 Ky.R.)
As Amended	26	7-31-09
201 KAR 20:370		
Amended	528	
As Amended	781	10-21-09
201 KAR 20:450		
Amended	527	
201 KAR 20:411		
Amended	530	
As Amended	782	10-21-09
201 KAR 21:041		
Amended	855	
As Amended	1194	1-4-10
201 KAR 21:090		(See 35 Ky.R.)
As Amended	568	9-16-09
201 KAR 21:095		(See 35 Ky.R.)
As Amended	29	7-31-09
201 KAR 22:045		(See 35 Ky.R.)
As Amended	29	7-31-09
201 KAR 22:053		
Amended	1305	
201 KAR 23:075		
Amended	635	
As Amended	1195	1-4-10
201 KR 25:012		
Amendment	857	
201 KAR 30:010		
Amended	147	10-2-09
201 KAR 30:030		
Amended	150	
As Amended	568	10-2-09
201 KAR 30:050		
Amended	152	
Amended	569	
201 KAR 30:070		
Amended	154	
As Amended	571	10-2-09
201 KAR 30:180		
Amended	156	
As Amended	571	10-2-09
201 KAR 32:035		
Amended	1097	
201 KAR 33:010		
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201 KAR 33:015		
Amended	1308	
201 KAR 33:020		
Amended	1310	
201 KAR 33:030		
Amended	1311	
201 KAR 30:050		
Amended	1314	
201 KAR 34:010		
Amended	638	
As Amended	1017	12-4-09
201 KAR 34:015		
Amended	639	12-4-09
201 KAR 34:020		
Amended	641	
As Amended	1018	12-4-09
201 KAR 34:030		
Amended	642	
As Amended	1018	12-4-09
201 KAR 34:040		
Amended	645	
As Amended	1020	12-4-09
201 KAR 34:050		
Amended	646	12-4-09
201 KAR 36:060		
Amended	858	
201 KAR 37:010		(See 35 Ky.R.)
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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
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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139.480	103 KAR 3:020
139.483	103 KAR 3:020
139.495	103 KAR 3:020
139.497	103 KAR 3:020
139.515	103 KAR 3:020
139.517	103 KAR 3:020
139.518	103 KAR 3:020
139.550	103 KAR 3:020
139.570	103 KAR 3:020
139.590	103 KAR 3:020
139.620	103 KAR 3:020
139.770	103 KAR 3:020
139.778	103 KAR 3:020
140.010	103 KAR 3:050
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140.080	103 KAR 3:050
140.100	103 KAR 3:050
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143.040	103 KAR 3:050
143.050	103 KAR 3:050
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150.715	301 KAR 2:251
150.180	301 KAR 2:251
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150.280	301 KAR 3:022
150.290	301 KAR 3:022
150.305	301 KAR 2:142
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150.330	301 KAR 2:222
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150.360	301 KAR 2:142
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150.370	301 KAR 2:251
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158.070	702 KAR 7:125
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158.100	702 KAR 7:125
158.240	702 KAR 7:125
158.6451	16 KAR 2:010
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159.035	702 KAR 7:125
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161.030	16 KAR 2:010
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171.260	725 KAR 2:060
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171.270	725 KAR 2:060
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171.450	725 KAR 1:020
171.470	725 KAR 1:025
171.480	725 KAR 1:025
171.500	725 KAR 1:025
171.520	725 KAR 1:025
171.600	725 KAR 1:020
171.670	725 KAR 1:020
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194A.030	911 KAR 1:085
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205.460	910 KAR 1:160
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