ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 37, NUMBER 5
MONDAY, NOVEMBER 1, 2010

ARRS - NOVEMBER 9, 2010 TENTATIVE AGENDA 1153
REGULATION REVIEW PROCEDURE 1157

EMERGENCIES:
Department of Fish and Wildlife Resources 1158
Cabinet for Health and Family Services 1164

AS AMENDED:
Judicial Form Retirement System 1168
Kentucky Teachers' Retirement System 1170
Department of Revenue 1172
Department of Military Affairs 1177
Department of Local Government 1178
Board for Professional Engineers and Land Surveyors 1178
Board of Physical Therapy 1184
Board for Proprietary Education 1186
Kentucky Law Enforcement Council 1190
Department of Workforce Investment 1196
Department of Insurance 1197
Department of Financial Institutions 1197
Kentucky Horse Racing Commission 1202
Department of Housing, Buildings and Construction 1205
Cabinet for Health and Family Services 1213

AMENDED AFTER COMMENTS:
Board of Nursing 1215
EEC: Division for Air Quality 1222
Cabinet for Health and Family Services 1251

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 15, 2010:
Education Professional Standards Board 1317
Kentucky Teachers' Retirement System 1322
Board of Pharmacy 1328
Board of Social Work 1330
Department of Fish and Wildlife Resources 1338
Kentucky State Nature Preserves Commission 1346
EEC: Division for Air Quality 1349
Transportation Cabinet 1354
Department of Housing, Buildings and Construction 1356
Cabinet for Health and Family Services 1358

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, OCTOBER 15, 2010:
Education Assessment and Accountability 1361
Cabinet for Health and Family Services 1364

ARRS Report 1370
OTHER COMMITTEE REPORTS 1375

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates ..... **E - 2**
KRS Index ..... **E - 10**
Technical Amendments ..... **E - 18**
Subject Index ..... **E - 19**

MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet November 9, 2010 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **1153-1156** of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2010 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 37, Kentucky Register, page 318 (short form: 37 Ky.R. 318).

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

ADMINISTRATIVE REGISTER OF KENTUCKY
(ISSN 0096-1493)
© 2010 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $96 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.
POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator David L. Williams
Senate President

Representative Gregory Stumbo
House Speaker

Senate and House Members

Senator Katie Kratz Stine
President Pro Tem

Representative Larry Clark
Speaker Pro Tem

Senator Robert Stivers
Majority Floor Leader

Representative Rocky Adkins
Majority Floor Leader

Senator Ed Worley
Minority Floor Leader

Representative Jeffrey Hoover
Minority Floor Leader

Senator Daniel Seum
Majority Caucus Chairman

Representative Robert Damron
Majority Caucus Chairman

Senator Johnny Ray Turner
Minority Caucus Chairman

Representative Bob DeWeese
Minority Caucus Chairman

Senator Carroll Gibson
Majority Whip

Representative John Will Stacy
Majority Whip

Senator Jerry P. Rhoads
Minority Whip

Representative David Floyd
Minority Whip

Robert Sherman, Director
Joe Cox, Printing and Publications Officer

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Senator Elizabeth Tori, Co-Chair
Representative Leslie Combs, Co-Chair
Senator David Givens
Senator Alice Kerr
Senator Joey Pendleton
Representative Robert Damron
Representative Danny R. Ford
Representative Jimmie Lee

Staff

Dave Nicholas
Emily Caudill
Donna Little
Sarah Amburgey
Emily Harkenrider
Karen Howard
Laura Napier

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, NOVEMBER 9, 2010, at 1:00 p.m., Room 149 Capitol Annex

PERSONNEL CABINET

Office of the Secretary

101 KAR 2:210 & E. 2011 Plan Year Handbook for the Public Employee Health Insurance Program. ("E" expires 3/14/2011)

FINACE AND ADMINISTRATION CABINET
Kentucky Department of Revenue
Office of Income Taxation

Forms

103 KAR 3:050. Miscellaneous taxes forms manual. (Comments Received)

Income Tax; General Administration

103 KAR 15:180. Kentucky New Markets Development Program Tax Credit.

Office of the Secretary

Purchasing

200 KAR 5:400. Kentucky resident bidder reciprocal preference.

200 KAR 5:410. Preferences for purchases of commodities or services.

GENERAL GOVERNMENT CABINET
Board for Specialists in Hearing Instruments

Board

201 KAR 7:075. Continuing education requirements.

Board of Dentistry

Board

201 KAR 8:007E. Repeal of 201 KAR 8:006, 8:015, 8:070, 8:130, 8:135, 8:140, 8:150, 8:160, 8:170, 8:180, 8:185, 8:190, 8:220, 8:225, 8:230, 8:240, 8:250, 8:260, 8:265, 8:270, 8:277, 8:280, 8:290, 8:310, 8:320, 8:330, 8:340, 8:345, 8:350, 8:355, 8:400, 8:420, 8:430, 8:440, 8:450, 8:460, 8:70, and 8:490. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:510 & E. Advisory opinions. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:520 & E. Fees and fines. ("E" expires 2/10/2011) (Comments Received, SOC ext.)

201 KAR 8:530 & E. Licensure of dentists. ("E" expires 2/10/2011) (Comments Received, SOC ext.)

201 KAR 8:540 & E. Dental practices. ("E" expires 1/11/2011) (Deferred from September)

201 KAR 8:560 & E. Licensure of dental hygienists. ("E" expires 2/10/2011) (Comments Received, SOC ext.)

Board of Veterinary Examiners

Board

201 KAR 16:030 & E. License, renewal notice, exemption. ("E" expires 11/9/2010) (Deferred from July)

Board of Speech-Language Pathology and Audiology

Board

201 KAR 17:030. License fees and renewal requirements.

Board of Nursing

Board

201 KAR 20:056. Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization. (Amended After Comments)

201 KAR 20:061. Doctor of Nursing Practice (DNP) degree. (Not Amended After Comments)

201 KAR 20:062. Standards for advanced practice registered nurse (ARPN) programs of nursing. (Amended After Comments)

Board of Physical Therapy

Board

201 KAR 22:070. Requirements for foreign-educated physical therapists. (Not Amended After Comments)

Board of Licensure for Occupational Therapy

Board

201KAR 28:010. Definitions and abbreviations.

201 KAR 28:130. Supervision of occupational therapy assistants, occupational therapy students, and temporary permit holders.

Board of Certification for Professional Counselors

Board

201 KAR 36:060. Qualifying experience under supervision. (Deferred from October)

201 KAR 36:070. Education requirements. (Deferred from October)

Board for Private Investigators

Board

201 KAR 41:100. Verification of 240 hour employees.

Board of Licensure for Massage Therapy

Board

201 KAR 42:010. Goals for massage therapy sessions.

201 KAR 42:020. Fees.

201 KAR 42:030. Licensee's change of name, home address, or place of business.

201 KAR 42:035. Application process, exam, and curriculum requirements.

201 KAR 42:040. Renewal.

201 KAR 42:050. Complaint procedure and disciplinary action.

201 KAR 42:060. Code of ethics, and standards of practice for massage therapists.

201 KAR 42:070. Endorsement.

201 KAR 42:080. Programs of massage therapy instruction.

201 KAR 42:110. Continuing education requirements.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources

Game
301 KAR 2:082. Transportation and holding of live exotic wildlife.
301 KAR 2:225 & E. Dove, wood duck, teal, and other migratory game bird hunting. ("E" expires 2/14/2011)

DEPARTMENT OF AGRICULTURE
Office of State Veterinarian
Division of Animal Health

Livestock Sanitation
302 KAR 20:065. Sale and exhibition of Kentucky origin animals in Kentucky.
302 KAR 20:066. Chronic wasting disease surveillance in farmed cervids.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water

Public Water Supply
401 KAR 8:100. Design, construction, and approval of facilities. (Amended After Comments) (Deferred from October)

Division for Air Quality

Attainment and Maintenance of the National Ambient Air Quality Standards
401 KAR 51:001. Definitions for 401 KAR Chapter 51. (Amended After Comments)

Permits, Registrations, and Prohibitory Rules
401 KAR 52:001. Definitions for 401 KAR Chapter 52. (Amended After Comments)

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

Office of the Secretary
501 KAR 6:020. Corrections policies and procedures.
501 KAR 6:090. Frankfort Career Development Center.

Department of Kentucky State Police

Sex Offender Registration System
502 KAR 31:020. Sex offender registration system.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

Division
601 KAR 1:018. Special overweight or overdimensional permits. ("E" expires 2/8/2011) (Deferred from October)

Division of Motor Vehicle Licensing

Motor Vehicle Tax
601 KAR 9:205. Titling of all-terrain vehicles.

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

School Administration and Finance
702 KAR 3:246. School council allocation formula: KETS District Administrative System Chart of Accounts. (Deferred from June)

Pupil Transportation
702 KAR 5:110. Vocational pupils, reimbursement for. (Deferred from August)

Department of Workforce Investment
Office of Vocational Rehabilitation

Administration
781 KAR 1:040. Rehabilitation technology services. (Amended After Comments) (Deferred from October)

Office of Employment and Training

Unemployment Insurance
787 KAR 1:320. Priority of deductions from benefits.

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

Occupational Safety and Health
803 KAR 2:318. Electrical.
803 KAR 2:400. Adoption of 29 C.F.R. 1926.1, 1926.4, and 1926.6.
803 KAR 2:402. General safety and health provisions.
803 KAR 2:411. Scaffolds.
803 KAR 2:412. Fall protection.
803 KAR 2:413. Subpart N-helicopters, hoists, elevators, and conveyors.
803 KAR 2:414. Motor vehicles, mechanical equipment, and marine operations.
803 KAR 2:417. Steel erection.
803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air.
803 KAR 2:419. Adoption of 29 C.F.R. Part 1926.850-860.
803 KAR 2:421. Adoption of 29 C.F.R. Part 1926.950-960.
803 KAR 2:423. Adoption of 29 C.F.R. Part 1926.1050-1060.

803 KAR 2:430. Appendix A to 29 C.F.R. Part 1926.
803 KAR 2:505. Cranes and derricks in construction.
803 KAR 2:550. Cranes and derricks used in demolition and underground construction.

Department of Workers' Claims

Department
803 KAR 25:089. Workers' compensation medical fee schedule for physicians.
803 KAR 25:091 & E. Workers' compensation hospital fee schedule. ("E" expires 3/14/2011)

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

Mining Safety Standards
805 KAR 3:100. Equipment use and operations.

PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division

Trade Practices and Frauds
806 KAR 12:150. Annuity disclosures.
806 KAR 12:170. Life insurance disclosures.
Life Insurance and Annuity Contracts
806 KAR 15:090. Notice of rights as an owner of a life insurance policy. (Comments Received)

Division of Kentucky Access

Health Insurance Contracts
806 KAR 17:320. Kentucky Access requirements. (Comments Received)
Liability Self-insurance Groups
806 KAR 46:011. Repeal of 806 KAR 46:010.
806 KAR 46:040. Forms for application and financial statements.

Kentucky Horse Racing Commission

Thoroughbred Racing
810 KAR 1:001. Definitions. (Comments Received)
810 KAR 1:009 & E. Jockeys and apprentices. ("E" expires 1/14/2011) (Not Amended After Comments) (Deferred from October)
810 KAR 1:011. Pari-mutuel wagering. (Comments Received)
810 KAR 1:026 & E. Racing associations. ("E" expires 1/14/2011) (Not Amended After Comments) (Deferred from October)
810 KAR 1:110 & E. Out-of-competition testing. ("E" expires 3/14/2011)
810 KAR 1:120. Exotic wagering. (Comments Received)
810 KAR 1:130. Postrace sampling and testing procedures.
Harness Racing
811 KAR 1:005. Definitions. (Comments Received)
811 KAR 1:125. Pari-mutuel wagering. (Comments Received)
811 KAR 1:220. Harness racing at county fairs.
811 KAR 1:240 & E. Out-of-competition testing. ("E" expires 3/14/2011)
811 KAR 1:250. Exotic wagering. (Comments Received)
811 KAR 1:260. Postrace sampling and testing procedures.
Quarter Horse, Appaloosa and Arabian Racing
811 KAR 2:010. Definitions. (Comments Received)
811 KAR 2:060. Pari-mutuel wagering. (Comments Received)
811 KAR 2:150 & E. Out-of-competition testing. ("E" expires 3/14/2011)
811 KAR 2:160. Exotic wagering. (Comments Received)
811 KAR 2:170. Postrace sampling and testing procedures.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy

Data Reporting and Public Use Data Sets
900 KAR 7:030. Data reporting by health care providers.

Department for Public Health
Division of Epidemiology and Health Planning

Communicable Diseases
902 KAR 2:060. Immunization schedules for attending day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private primary and secondary schools.

Office of Inspector General
Division of Health Care

Health Services and Facilities
902 KAR 20:410 & E. Specialty intermediate care clinics. ("E" expires 2/28/2011)

Department for Public Health
Division of Adult and Child Health Improvement

Kentucky Early Intervention System
902 KAR 30:001 & E. Definitions. ("E" expires 2/10/2011) (Amended After Comments)
902 KAR 30:110 & E. Point of entry and service coordination. ("E" expires 2/10/2011) (Amended After Comments)
902 KAR 30:120 & E. Evaluation and eligibility. ("E" expires 2/10/2011) (Amended After Comments)
902 KAR 30:130 & E. Assessment, service planning, and assistive technology. ("E" expires 2/10/2011) (Amended After Comments)
902 KAR 30:141. Repeal of 902 KAR 30:140 and 30:170. (Deferred from September)
902 KAR 30:150 & E. Personnel qualification. ("E" expires 2/10/2011) (Amended After Comments)
902 KAR 30:160 & E. Covered services. ("E" expires 2/10/2011) (Amended After Comments)

902 KAR 30:180 & E. Procedural safeguards. ("E" expires 2/10/2011) (Amended After Comments)
902 KAR 30:200 & E. Coverage and payment for services. ("E" expires 2/10/2011) (Amended After Comments)

Department for Medicaid Services
Division of Healthcare Facilities Management

Medicaid Services

907 KAR 1:012 & E. Inpatient hospital service coverage. ("E" expires 1/27/2011) (Not Amended After Comments)
907 KAR 1:015 & E. Payments for outpatient services. ("E" expires 1/27/2011) (Not Amended After Comments)
907 KAR 1:019 & E. Outpatient pharmacy program. ("E" expires 1/27/2011) (Amended After Comments)
907 KAR 1:479 & E. Durable medical equipment covered benefits and reimbursement. ("E" expires 1/27/2011) (Not Amended After Comments)
907 KAR 1:677 & E. Medicaid recipient lock-in program. ("E" expires 1/27/2010) (Amended After Comments)
907 KAR 1:825 & E. Diagnosis-related group (DRG) inpatient hospital reimbursement. ("E" expires 1/27/2011) (Comments Received, SOC ext.)

Division of Community Alternatives

Payment and Services

907 KAR 3:090 & E. Acquired brain injury waiver services. ("E" expires 1/27/2011) (Amended After Comments)
907 KAR 3:100 & E. Reimbursement for acquired brain injury waiver services. ("E" expires 1/27/2010) (Deferred from September)

REMOVED FROM NOVEMBER 2010 AGENDA

GENERAL GOVERNMENT CABINET
Board of Dentistry

Board

201 KAR 8:390E. General anesthesia, deep sedation, and conscious sedation by dentists. ("E" expires 1/11/2011) (Deferred from September)
201 KAR 8:500 & E. Board organization. ("E" expires 1/11/2011) (Deferred from September)
201 KAR 8:570 & E. Registration of dental assistants. ("E" expires 2/10/2011) (Comments Received, SOC ext.)

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

Office of Instruction

704 KAR 3:303. Required core academic standards. (Deferred from November)
704 KAR 3:305. Minimum requirements for high school graduation. (Deferred from August)

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Building Code Enforcement

Kentucky Building Code

815 KAR 7:120. Kentucky building code. (Comments Received)
815 KAR 7:125. Kentucky residential code. (Comments Received)

Division of Plumbing

Plumbing

815 KAR 20:100. Joints and connections. (Deferred from August)

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
~~**Division of Public Health Protection and Safety**~~

~~**Food and Cosmetics**~~

~~902 KAR 45:005E. Kentucky food code. ("E" expires 3/7/2011)~~ (Withdrawn by agency, 10/18/2010)
~~902 KAR 45:110E. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and seasonal restricted concessions. ("E" expires 3/7/2011)~~ (Withdrawn by agency, 10/18/2010)

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, OCTOBER 15, 2010

STATEMENT OF EMERGENCY
301 KAR 2:221E

This emergency administrative regulation establishes season dates, limits, shooting hours, and other requirements for hunting waterfowl. Waterfowl hunting season frameworks are set annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons shall do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the waterfowl season. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation. The ordinary administrative regulation will be filed simultaneously with the Regulations Compiler by November 15, 2010.

BENJY KINMAN, Deputy Commissioner
for DR. JONATHAN GASSETT, Commissioner
STEVEN L. BESHEAR, Governor

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:221E. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990
STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21
EFFECTIVE: October 15, 2010
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.
(2) "Light Goose" means a snow goose or Ross's goose.
(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60
(4) "Waterfowl" is defined in KRS 150.010(40).

Section 2. (1) Except as authorized by 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.
(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season dates. (1) Duck, coot, and merganser:
(a) Beginning on Thanksgiving Day for four (4) consecutive days; and
(b) For fifty-six (56) consecutive days ending on the last Sunday in January of the following year.
(2) Canada goose:
(a) Eastern, Pennyrile, and Western Goose Zones, beginning on November 23 for seventy (70) consecutive days.
(b) Northeast Goose Zone;
1. Beginning on the last Saturday in December [~~following Christmas~~] for nine (9) consecutive days; and
2. [~~Beginning on~~] January 19 through January 31 [~~for thirteen (13) consecutive days~~].
(3) White-fronted and brant geese, beginning on November 23 for seventy (70) consecutive days.
(4) Light goose:
(a) Beginning on November 23 for seventy (70) consecutive days; and
(b) Light Goose Conservation Order season:
1. Western Duck Zone: from February 1 through March 31, except:
a. The season shall be closed during the first full week in February; and
b. Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226 [~~5 and February 8 through March 31~~].
2. Eastern Duck Zone from February 1 through March 31.
(5) A person shall not hunt a light or dark goose in:
(a) The areas of Laurel River Lake as posted by sign; or
(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. In the Ballard Reporting Area that is established in 301 KAR 2:224:
(1) A person hunting waterfowl shall:
(a) Hunt from a blind unless hunting in flooded, standing timber;
(b) Not hunt from or establish a blind:
1. Within 100 yards of another blind; or
2. Within fifty (50) yards of a property line; and
(c) Not possess more than one (1) shotgun while in a blind.
(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in 301 KAR 2:221, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks: The daily limit shall be six (6), that shall not include more than:
(a) Four (4) mallards;
(b) Two (2) hen mallards [~~One (1) hen mallard~~];
(c) Three (3) wood ducks;
(d) One (1) black duck;
(e) Two (2) redheads;
(f) Two (2) pintails[~~One (1) pintail~~];
(g) Two (2) scaup;
(h) One (1) mottled duck; or
(i) One (1) canvasback.
(2) Coot: Daily limit fifteen (15).
(3) Merganser: Daily limit five (5), which shall not include more than two (2) hooded mergansers.
(4) Dark goose: Daily limit six (6), that shall not include more than:
(a) Two (2) Canada geese;
(b) Two (2) white-fronted geese; or
(c) Two (2) brants.
(5) Light goose: Daily limit twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.
(6) The possession limit shall be double the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:
(1) 2 p.m. in the Northeast Goose Zone during a Canada goose season;
(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222; or
(3) One-half (1/2) hour after sunset if hunting light goose during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) Season dates:
(a) Light goose: November 5 through January 31;
(b) Light Goose Conservation Order season:
1. Western Duck Zone: from February 1 through March 31, except:

a. The season shall be closed during the first full weekend in February; and

b. Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226[; ~~February 5 and February 8 through March 31~~].

2. Remainder of state: from February 1 through March 31; and

(c) Other waterfowl: November 5 through January 31.

(2) Daily limit: three (3) waterfowl, except that there shall not be a limit on light goose during the Light Goose Conservation Order season.

(3) Possession limit: six (6) waterfowl, except that there shall not be a possession limit on light goose during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light goose during the Light Goose Conservation Order season shall first obtain a free permit from the department by contacting the Ballard WMA office.

(2) A person hunting light goose during the Light Goose Conservation Order season shall submit a Light Goose Conservation Order report to the department by April 10.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: August 13, 2010.
FILED WITH LRC: October 15, 2010 at 11 a.m.
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2010–11 waterfowl hunting seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates and bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing waterfowl hunting seasons and area-specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with national and international management goals

(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: Each fall the USFWS issues a federal mandate establishing the framework for waterfowl hunting seasons. This amendment reflects the federal mandate regulations for waterfowl hunting under guidance of the Migratory Bird Treaty Act. Federal frameworks permit a maximum 60-day season in the Mississippi Flyway. Kentucky will split duck season in 2010, using four days to accommodate hunters during the Thanksgiving weekend with the remaining 56 days open through the last Sunday in January as specified in the federal frameworks. In 2010, the bag limits on hen mallards and pintails will be two (2) birds per day for the entire duck season.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(c) How does the amendment conform to 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 that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt waterfowl in the state.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for 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. It will not be necessary to increase any other fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations to restrict the methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. States must adhere to 50 C.F.R. Parts 20 and 21 that establishes the U.S. Fish and Wildlife Service's Federal migratory bird hunting frameworks.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory limits that a state may permit. States are permitted to be more restrictive but not more liberal in their respective regulations. State waterfowl population migration and winter management objectives necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's waterfowl hunters. The season on snow geese is shorter than the federal framework because migration patterns for this species result in a paucity of birds early in the federal framework. The Canada goose season in the Northeast Goose Zone is shorter than is permitted in the rest of the state because of the desire to maintain a huntable population in that region of the state.

STATEMENT OF EMERGENCY
301 KAR 2:222E

This emergency administrative regulation establishes season dates, limits, shooting hours and other requirements for hunting waterfowl on public lands. Waterfowl hunting season frameworks are set annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons shall do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because the federal framework is not established until days before the start of the waterfowl season. This emergency administrative regulation shall be replaced by an identical ordinary administrative regulation. The ordinary administrative regulation will be filed simultaneously with the Regulations Compiler by November 15, 2010.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:222E. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010(40), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

EFFECTIVE: October 15, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Blind" means a:

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

(2) [~~"Blind site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.~~

~~(3)~~] "Department blind" means a permanently fixed blind structure built by the department.

(3) "Hunt site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind or hunt[~~blind~~] site.

(6) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(7) "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order or [~~for~~] the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

(8) "Waterfowl" is defined in KRS 150.010(40).

(9) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) that has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Shot requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 3. (1) Except as specified in this section or in Section 4[~~5~~] of this administrative regulation, on a Wildlife Management Area:

(a) A person hunting waterfowl shall not:

1. Establish or hunt from a permanent waterfowl blind;

2. Hunt within 200 yards of:

a. Another occupied hunt site;

b. Another legal waterfowl hunting party; or
c. An area closed to waterfowl hunting[:
~~1. A permanent waterfowl blind; or~~
~~2. A waterfowl blind within 200 yards of:~~
~~a. Another waterfowl blind; or~~
~~b. A waterfowl refuge~~];

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and

(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) A person wanting to establish or use a permanent waterfowl blind or hunt[~~blind~~] site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas:

(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site[~~WMA blind~~] permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

1. A valid Kentucky hunting license;
2. A Kentucky waterfowl permit; and
3. A federal duck stamp.

(4) The holder of a hunt site [~~waterfowl blind~~] permit shall:

(a) Construct or establish the blind or hunt [~~blind~~] site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department based on weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements. (1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access; or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

1. The daily bag limit for ducks is greater than three (3); and
2. The daily bag limit for Canada goose is greater than or equal to two (2);

(b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site at Ballard or Boatwright WMA.

(5) At Ballard WMA:

(a) The duck, coot, and merganser season shall be December 8[~~9~~] through January 30[~~31~~].

(b) The goose season shall be December 8[~~9~~] through January 30[~~31~~].

(c) Youth waterfowl season shall be the first full weekend in February.

(d) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Day, or New Year's Day.

(e) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 6 of this administrative regulation;
2. [~~Case his or her gun if using department-supplied transportation to and from a waterfowl blind;~~
~~3.~~] Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard Wildlife Management Area from October 15 through March 15; and
3.[~~4.~~] Exit the area by 2 p.m. during the regular waterfowl season, except as authorized by the department.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Day, or New Year's Day;
2. Obtain a daily check-in card by 8 a.m. before entering the area from December 8[~~9~~] through January 30[~~31~~].
3. Check out the same day by:

a. Visiting the designated Check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting.

(c) A department blind or hunt [~~blind~~] site shall be assigned through a daily drawing through January 30[~~31~~].

(d) A department blind or hunt [~~blind~~] site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt [~~blind~~] site has not been assigned during the daily drawing.

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season.

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or
2. A mobility-impaired hunter may hunt from a boat[~~, and the 200-yard minimum distance restriction, as established in this section, shall not apply to a person assisting a mobility-impaired hunter~~].

(g) A party shall only hunt waterfowl:

1. From a department blind; or
2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt [~~blind~~] site in December and January during the regular waterfowl season.

(h) On the Peal unit:

1. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;
2. More than four (4) parties shall not hunt at the same time on Fish Lake;
3. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;
4. A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt [~~blind~~] site during December and January.

(i) On the Swan Lake Unit:

1. A person shall not hunt waterfowl from November 25[~~26~~] through December 5[~~6~~];
2. The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and
3. Blind restrictions shall not apply to the Light Goose Conservation Order season.

(7) Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a blind site;

(b) Waterfowl refuge areas:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile fifty-one (51), at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile fifty-five and five-tenths (55.5) shall be closed from November 1 through February 15; and
2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(8) Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(9) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(10) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(11) Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(12) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(c) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, [~~Fish Lake,~~] Number Four Lake, and Upper Goose [~~Black~~] Lake, all waterfowl hunting after November 1:

1. Shall be from hunt [~~blind~~] sites assigned by a random pre-season drawing; and

2. Shall be within ten (10) yards of a hunt [~~blind~~] site, including periods of Mississippi River flooding.

(13) Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; and

(d) Within three-quarters (3/4) of a mile from the dam.

(14) Green River Lake WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(15) Kaler Bottoms WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(16) Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys;

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A person hunting waterfowl shall remove decoys and personal items daily.

(17) Obion Creek WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(18) Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15, except for those drawn for a quota deer hunt.

(c) Shooting hours shall be one-half (1/2) hours before sunrise until 2 p.m.

(19) Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and

2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(20) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(21) Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.

(c) On the Grassy-Pond Powell's Lake Unit, a person hunting waterfowl:

1. Shall hunt:

a. From a department blind; or

b. From a blind within twenty-five (25) yards of a blind site.

2. Shall remove decoys and personal items from the area on a daily basis.

(d) On the Jenny Hole-Highlands Creek Unit, a person hunting waterfowl

1. Shall hunt:

a. From a department blind;

b. Within twenty-five (25) yards of a hunt [~~From a blind within twenty-five (25) yards of a blind~~] site; or

c. [~~From a blind that is~~] No closer than 200 yards of another hunting party.

2. Shall remove decoys and personal items from the area on a daily basis.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f) A person hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from a blind assigned by the department through a drawing as established in Section 6 of this administrative regulation;

2. May occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise;

3. Shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if:

(a) The daily bag limit for ducks is greater than three (3); and

(b) The daily bag limit for Canada goose is greater than or equal to two (2);

4. Shall be accompanied by an adult if under eighteen (18) years of age; and

5. The waterfowl blind for a mobility-impaired person shall be open to the public if the permit holder or another mobility-impaired person has not claimed the blind on that day by one (1) hour before sunrise.

(g) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except for:

1. Waterfowl from November 1 through March 15; and

2. The modern gun deer season.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(22) South Shore WMA.

(a) The WMA shall be closed to hunting from November 15 through January 15, except for quota waterfowl hunting and dove hunting.

(b) [~~The quota hunt shall require advance application and selection.~~

~~(c)~~] A hunter shall use a department blind.

(c)[~~(d)~~] A department blind shall be allocated by a preseason drawing.

(23) Taylorsville Lake WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(24) Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(25) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 5. (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply through the vendor supplied by the department by calling 1-877-598-2401

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt may bring up to three (3) additional hunters.

(3) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of Barren River, Grayson Lake, Greenbo Lake, Lake Barkley, Lincoln Homestead, Nolin Lake, Paintsville Lake, Pennyrile Lake, Rough River Lake, and Yatesville Lake State Parks.

(2) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days that the park office is not open.

(3) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.

(5) Statewide waterfowl hunting requirements shall apply.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts. (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries:

(a) [~~The last Saturday in December;~~

~~(b)~~] The last Sunday in December;

(b)[~~(c)~~] The first Saturday in January;

(c)[~~(d)~~] The first Sunday in January;

(d)[~~(e)~~] The fourth Saturday in January;

(e)[~~(f)~~] The fourth Sunday in January;

(f)[~~(g)~~] The fifth Saturday in January; and

(g)[~~(h)~~] The fifth Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) A youth or mobility-impaired person shall register in advance and carry a department provided postcard notification on the day of the hunt.

(4) A mobility-impaired person shall also submit a mobility-impaired access permit.

(5) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(6) Each youth shall not be accompanied by more than one (1) adult.

(7) One (1) adult may accompany two (2) youths.

(8) A mobility-impaired hunter may be accompanied by no more than one (1) assistant who may also hunt.

(9) A person shall hunt from an established blind and shall not change blinds.

(10) A blind shall not be used by more than four (4) hunters.

(11) A person shall only discharge a firearm from a blind.

(12) A person shall not possess more than fifteen (15) shotshells.

(13) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(14) A person shall encase a firearm if traveling to and from a blind.

(15) Hunting shall end at noon, and hunters shall exit the area by 1 p.m.

(16) All decoys and equipment shall be removed at the end of each day's hunt.

(17) A hunter shall report harvest by depositing a completed hunt permit at the designated location.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: August 13, 2010.
FILED WITH LRC: October 15, 2010 at 11 a.m.
CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the U.S. Fish and Wildlife Service.

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2010–2011 waterfowl hunting requirements in accordance with the U.S. Fish and Wildlife Service and Kentucky Department of Fish and Wildlife Resources management objectives.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates, bag limits and other hunting requirements. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing waterfowl hunting seasons and area-specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with state, national and international management goals, and within the statutory authority.

(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: Each fall the U.S. Fish and Wildlife Service issues a federal mandate establishing frameworks for waterfowl hunting seasons in the United States. This amendment reflects the federal mandate regulations for waterfowl hunting within the requirements of the Migratory Bird Treaty Act. This amendment redefines waterfowl hunt sites versus waterfowl blinds on public land, adjusts some hunt dates due to calendar shift, adjusts youth-mentor hunt dates on fish hatchery property, and adjusts hunting procedures and hunting pressure on some properties.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal framework mandates from the U.S. Fish and Wildlife Service and effectively manage public hunting pressure on public lands, conserve the waterfowl resource, and provide adequate public hunting opportunity with minimal area use conflict.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administra-

tion of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments in season dates and hunting requirements will be published in the fall waterfowl hunting guide and on the department's website. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

(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 or amended costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity for quality waterfowl hunting on public areas.

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

(a) Initially: This administrative regulation change will result in no additional cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for 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. It will not be necessary to increase any other fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations to restrict the methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on private and public land.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a specie(s) is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum frameworks and requirements permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public wetlands managed by KDFWR. KDFWR imposes more restrictive hunting regulations on these lands in effort to meet international waterfowl management objectives while still providing quality hunting opportunity consistent with waterfowl population objectives.

STATEMENT OF EMERGENCY
907 KAR 3:215E

This emergency administrative regulation is being promulgated to establish the Medicaid program's tobacco cessation program. This action must be implemented on an emergency basis as mandated by the Kentucky legislature pursuant to KRS 205.560(1)(j) and as funding for the program has been provided in the 2010-2012 biennium budget. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

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

907 KAR 3:215E. Tobacco cessation coverage and reimbursement.

RELATES TO: KRS 205.520(3), 205.560(1)(j)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)(j), 42 U.S.C. 1396r-8(d).

EFFECTIVE: October 1, 2010

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the department's coverage and reimbursement of tobacco cessation services.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

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

(3) "FDA" means the United States Food and Drug Administration.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Medically necessary" means that a covered benefit is determined by the department to be needed in accordance with 907 KAR 3:130.

(6) "Physician" is defined by KRS 311.550(12).

(7) "Physician assistant" is defined by KRS 311.840(3).

(8) "Recipient" is defined by KRS 205.8451(9).

(9) "Supervising physician" is defined by KRS 311.840(4).

(10) "Tobacco cessation product" means nicotine replacement therapy:

(a) Gum;

(b) Lozenge;

(c) Patch;

(d) Inhaler; or

(e) Spray.

Section 2. Provider Requirements for a Tobacco Cessation Assessment. A tobacco cessation assessment provider shall be:

(1) A physician who is:

(a) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(b) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671;

(2) A physician assistant working under the supervision of a supervising physician who is:

(a) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(b) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671;

(3) An APRN who is:

(a) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(b) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671; or

(4) Any of the following employed by a local health department:

(a) A physician assistant working under the supervision of a supervising physician;

(b) A physician; or

(c) An APRN.

Section 3. Tobacco Cessation Assessment and Referral. (1) The department shall reimburse for a tobacco cessation assessment if the tobacco cessation assessment is provided:

(a) By a provider listed in Section 2 of this administrative regulation; and

(b) To a recipient.

(2) A tobacco cessation assessment shall:

(a) Be performed over a period of at least thirty (30) minutes;

(b) Be performed face-to-face with the recipient;

(c) Include:

1. Asking the recipient about tobacco use;

2. Advising the recipient to quit using tobacco;

3. Assessing the recipient's readiness to quit using tobacco;

4. Compiling a tobacco usage, medical, and psychosocial history of the recipient;

5. Incorporating a review of the recipient's coping skills and barriers to quitting; and

6. The provider's obtaining of a signed and dated Tobacco Cessation Referral Form from the recipient declaring the recipient's intent to quit using tobacco; and

(d) Be conducted once per course of treatment.

(3)(a) A provider shall complete a Tobacco Cessation Referral Form with the recipient in accordance with the instructions on the form;

(b) Via the Tobacco Cessation Referral Form, a provider and recipient shall choose a tobacco cessation program for the recipient unless:

1. The provider recommends that the recipient should not have to participate in a tobacco cessation program; or

2. A hardship which prevents the recipient from accessing a tobacco cessation program exists; and

(c) If a tobacco cessation program is not selected for a recipient due to subparagraph 1. or 2. of this paragraph, the provider shall denote this on the tobacco cessation referral form.

(4) A provider shall:

(a) Submit a completed Tobacco Cessation Referral Form to the department in accordance with the instructions on the form; and

(b) Give a copy of the completed Tobacco Cessation Referral Form to the recipient.

(5) The department shall reimburse for no more than two (2) tobacco cessation assessments per recipient per calendar year.

(6) If a recipient has a hardship which is not revealed or denoted during an assessment, the department may:

(a) Determine that a hardship exists; and

(b) Exempt the recipient from the requirement to participate in a tobacco cessation program.

Section 4. Tobacco Cessation Medication. (1) If a physician, APRN, or physician assistant working under a supervising physician as specified in Section 2 of this administrative regulation prescribes a medically necessary tobacco cessation medication for a recipient, the physician, APRN, or physician assistant shall prescribe:

(a) An initial one (1) month supply of the medication; and

(b) Up to two (2) refills of the medication.

(2)(a) A recipient who is referred to a tobacco cessation program shall, after participating in the first month of the tobacco cessation program, contact the department as instructed on the Tobacco Cessation Referral Form and indicate the intent to continue participation in the tobacco cessation program for another month.

(b) If the recipient indicates that he or she will continue participation in the program in accordance with paragraph (a) of this subsection, the department shall reimburse for the first refill of the tobacco cessation medication as established in subsection (1)(b) of this section.

(c) If the department does not receive confirmation that a recipient intends to continue participation in the tobacco cessation program, the department shall not reimburse for a refill as established in subsection (1)(b) of this section.

(3)(a) A recipient who is referred to a tobacco cessation program shall, after participating in the second month of the program, contact the department as instructed on the Tobacco Cessation Referral Form and indicate the intent to continue participating in the tobacco cessation program for another month.

(b) If the recipient indicates that he or she will continue participation in the program in accordance with paragraph (a) of this subsection, the department shall provide reimbursement for the second refill of the tobacco cessation medication as established in subsection (1)(b) of this section.

(c) If the department does not receive confirmation that the recipient intends to continue participation in the tobacco cessation program, the department shall not reimburse for a refill as established in subsection (1)(b) of this section.

Section 5. Tobacco Cessation Reimbursement. (1) For the department to reimburse for a tobacco cessation medication or product provided to a recipient:

(a) The tobacco cessation medication or product shall be medically necessary;

(b) The tobacco cessation medication or product shall be approved by the FDA for tobacco cessation;

(c) The tobacco cessation medication or product shall be prescribed for the recipient in accordance with Section 2 of this administrative regulation;

(d) If the tobacco cessation medication or product is a refill, the recipient shall have met the requirements established in Section 4(2) or (3) of this administrative regulation unless the recipient is exempt from the requirements pursuant to Section 3(3)(b) or (6); and

(e) If subject to prior authorization, the tobacco cessation medication or product shall have been prior authorized by the department.

(2) The department shall reimburse for a combination of nicotine replacement therapy that consists of no more than two (2) tobacco cessation medications or products.

(3) The department shall reimburse for a tobacco cessation medication in accordance with 907 KAR 1:018.

(4) Reimbursement for a tobacco cessation medication shall be limited to two (2) courses of treatment per recipient per calendar year.

(5) The department shall reimburse for a tobacco cessation assessment provided by:

(a) A physician, in accordance with 907 KAR 3:010, Section 2(2)(b);

(b) A physician assistant, in accordance with 907 KAR 3:010, Section 3(6) and (7)(a); or

(c) An APRN, in accordance with 907 KAR 1:104, Section 2(1)(b).

Section 6. Reporting Requirements. (1) A recipient shall:

(a) Upon the department's request, provide information to the department regarding the recipient's success or failure at tobacco cessation as a result of receiving a service reimbursed by the department; or

(b) Upon the provider's request, provide information to the provider regarding the recipient's success or failure at tobacco cessation as a result of receiving a service reimbursed by the department.

(2) A provider shall, upon the department's request, provide information to the department regarding the recipient's success or failure at tobacco cessation as a result of receiving a service reimbursed by the department.

Section 7. Cost Sharing Exemption for Tobacco Cessation Medications. The department shall impose no cost sharing for any tobacco cessation medication referenced in this administrative regulation.

Section 8. Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision; or

(2) Disapproves the provision.

Section 9. Appeal. An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be conducted in accordance with 907 KAR 1:563.

Section 10. Incorporation by Reference. (1) The "Tobacco Cessation Referral Form", July 2010 edition, is incorporated by reference.

(2) The material referenced in subsection (1) of this section is available at:

(a) http://www.chfs.ky.gov/dms/incorporated.htm; or

(b)The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 30, 2010
FILED WITH LRC: October 1, 2010 at 3 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lee Barnard or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This is a new administrative regulation which establishes the Department for Medicaid Services' (DMS's) tobacco cessation program provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid tobacco cessation program provisions as mandated by the Kentucky legislature pursuant to KRS 205.560(1)(j) and as funding for the program has been provided in the 2010-2012 biennium budget.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation establishes the tobacco cessation program for all Medicaid recipients. Previously, DMS only covered tobacco cessation for pregnant women.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation establishes the tobacco cessation program for all Medicaid recipients. Previously, DMS only covered tobacco cessation for pregnant women.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients who attempt to quit using tobacco, tobacco cessation programs approved by DMS for Medicaid recipients, and providers who refer Medicaid recipients to a tobacco cessation program will be affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Medicaid recipients who wish to receive tobacco cessation program benefits from DMS will have to provide a copy of the Tobacco Cessation Referral Form to the individual performing the tobacco cessation program in which the recipient participates or call DMS (to confirm participation) if the particular tobacco cessation program is an online program rather than an in-person program. Providers who perform assessments will have to complete a Tobacco Cessation Referral Form, in conjunction with the recipient, and give a copy of it to the recipient.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid recipients will be able to receive tobacco cessation program benefits.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that implementing this administrative regulation will cost approximately $ 6.2 million ($1.5 million commonwealth share/$4.7 million federal share) for state fiscal year (SFY) 2011.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $5.2 million (($1.5 million commonwealth share/$3.7 million federal share) for

SFY 2012.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds from state general fund appropriations. The Kentucky legislature allocated $1.5 million in state funds for each of SFY 2011 and 2012 to implement this administrative regulation. Federal matching funds are projected to equal $4.7 million in SFY 2011 and $3.7 million in SFY 2012.

(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: DMS understands that $1.5 million in general share funds was appropriated for state fiscal year 2011 and state fiscal year 2012 for the amendment via the budget bill HB 1 of the 2010 Extraordinary Session of the General Assembly even though the legislation does not explicitly address smoking cessation appropriation for DMS.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? No, the provisions apply equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation and local health departments, who perform tobacco cessation assessments for Medicaid recipients, will be affected.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. No state or federal regulation, other than this administrative regulation, requires or authorizes this action.

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? DMS projects no revenue to be generated by the administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS projects no revenue to be generated by the administrative regulation.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) estimates that implementing this administrative regulation will cost approximately $1.5 million commonwealth share/$4.7 million federal share) for state fiscal year (SFY) 2011.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing this administrative regulation will cost approximately $5.2 million ($1.5 million commonwealth share/$3.7 million federal share) for SFY 2012.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Kentucky Judicial Form Retirement System
(As Amended at ARRS, October 12, 2010)

4 KAR 1:010. General compliance with federal tax laws.

RELATES TO: KRS 6.500, 6.505, 6.515, 6.520, 6.521, 6.525, 6.530, 6.535, 6.575, 6.577 21.345, 21.347, 21.350, 21.357, 21.360, 21.370, 21.375, 21.380, 21.385, 21.400, 21.405, 21.410, 21.415, 21.420, 21.425, 21.427, 21.440, 21.450, 21.460, 21.470, 21.480, 21.510, 21.525, 21.530, 21.540, 21.550, 21.560, 21.570, 26 U.S.C. 401(a)(8), (17), (25), (37), 401(h), 414(u), and 38 U.S.C. 4301-4334

STATUTORY AUTHORITY: KRS 21.530 and 21.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.540**(3)[**~~(2)~~**]** authorizes the board of trustees of the Judicial Form Retirement System to promulgate administrative regulations, with retroactive effect if required by federal law, to conform the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan with federal law and to meet the qualification requirements under 26 U.S.C. 401(a). This administrative regulation establishes requirements to ensure compliance with federal tax laws.

Section 1. Definitions. (1) "Differential wage payment" is defined by 26 U.S.C. 3401(h)(2).

(2) "Plan" means the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan.

Section 2. Compliance with 26 U.S.C. 401(a)(8) for Forfeitures. In conformity with 26 U.S.C. 401(a)(8), any forfeitures of benefits by members or former members of the plan shall not be used to pay benefit increases.

Section 3. Compliance with 26 U.S.C. 401(a)(17) for Compensation Limit. (1) For years beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation of each member taken into account for determining all benefits provided under the Plans for any plan year shall not exceed $200,000. This limitation shall be adjusted **[**~~by the Secretary~~**]** at the same time and in the same manner as under 26 U.S.C. 415(d), except that the dollar increase in effect on January 1 of any calendar year shall be effective for plan years beginning with or within that calendar year, and the first adjustment to the $200,000 limitation shall be effective on January 1, 1990.

(2)(a) For years beginning on or after January 1, 1994, the annual compensation of each member taken into account for determining all benefits provided under the Plans for any determination period shall not exceed $150,000, as adjusted for the cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B).

(b) For plan years beginning on or after January 1, 2002, the annual compensation of each member taken into account in determining all benefits provided under the Plans for any determination period shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B).

(c) The cost-of-living adjustment in effect for a calendar year shall apply to any determination period beginning with or within that calendar year.

(3) If compensation for any prior determination period is taken into account in determining a members benefits for the current plan year, the compensation for that prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(a) For this purpose, in determining benefits in plan years beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation limit in effect for determination periods beginning before January 1, 1989, shall be $200,000.

(b) In determining benefits in plan years beginning on or after January 1, 1994, and before January 1, 2002, the annual compensation limit in effect for determination periods beginning before January 1, 2002, shall be $150,000.

(c) In determining benefits in plan years beginning on or after January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date shall be $200,000.

Section 4. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions. Kentucky Judicial Form Retirement System shall determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by **resolution[**~~rule~~**]**. Plan benefits shall not be subject to employer discretion.

Section 5. Compliance with 26 U.S.C. 401(h). (1) No diversion. At any time prior to the satisfaction of all liabilities under the Plan to provide for the payment of medical benefits described in 26 U.S.C. 401(h), the corpus or income of the medical benefits account shall not be used for, or diverted to, any purpose other than the providing of Plan benefits.

(2) Reversion. Any amounts which are contributed to fund medical benefits described in 26 U.S.C. 401(h) and which remain in the medical benefits account upon the satisfaction of all liabilities arising out of the operation of the medical benefits portion of the Plan shall be returned to the Commonwealth.

(3) Forfeitures. If a members interest in the medical benefits account is forfeited prior to termination of the Plan, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce contributions to fund the medical benefits described in 26 U.S.C. 401(h).

Section 6. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. (1) Effective December 12, 1994, contributions, benefits, and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301-4334

(2) Effective for deaths on or after January 1, 2007, if a member dies while performing qualified military service (as defined in 26 U.S.C. 414(u)), the survivors of the member shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) under the Plans had the member resumed and then terminated employment on account of death.

(3) Effective for Plan Years beginning on or after July 1, 2009, to the extent permitted by 26 U.S.C. 414(u)(12), an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment, and the differential wage payment shall be treated as compensation solely for Internal Revenue Code purposes and not for determining Plan benefits.

JOSEPH E. LAMBERT, Chairman

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 12, 2010 at 3 p.m.

CONTACT PERSON: Alan D. Pauw, Legal Counsel, Kentucky Judicial Form Retirement System, Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202, phone (502) 589-1000, fax (502) 562-2200.

FINANCE AND ADMINISTRATION CABINET
Kentucky Judicial Form Retirement System
(As Amended at ARRS, October 12, 2010)

4 KAR 1:040. Limitation on benefits.

RELATES TO: KRS 6.500, 6.505, 6.515, 6.520, 6.521, 6.525,

6.530, 6.535, 6.575, 6.577 21.345, 21.347, 21.350, 21.357, 21.360, 21.370, 21.375, 21.380, 21.385, 21.400, 21.405, 21.410, 21.415, 21.420, 21.425, 21.427, 21.440, 21.450, 21.460, 21.470, 21.480, 21.510, 21.525, 21.530, 21.540, 21.550, 21.560, 21.570, 26 U.S.C. 401(a)(16), and 415.

STATUTORY AUTHORITY: KRS 21.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 21.540**(3)[**(~~2~~)**]** authorizes the board of trustees of the Judicial Form Retirement System to promulgate administrative regulations, with retroactive effect if required by federal law, to conform the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan with federal law and to meet the qualification requirements under 26 U.S.C. 401(a). This administrative regulation establishes requirements for the administration of testing contribution and benefit limits in accordance with 26 U.S.C. 415.

Section 1. Definitions. (1) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(2) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

(3) "Annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)), and with the benefit attributable determined in accordance with Treasury Regulations located in 26 C.F.R. 1.415(b)-1.

(4)(a) "Permissive service credit" means service credit:

1. Recognized by the Plan for purposes of calculating a members benefit under the Plan;

2. Which the member has not received under the Plan; and

3. Which the member **shall[**~~may~~**]** receive only by making a voluntary additional contribution, in an amount determined under the Plan, which does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, **the[**~~such~~**]** term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (a)2 of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the Plan.

(5) Plan means the Kentucky Judicial Retirement Plan and the Kentucky Legislators Retirement Plan.

Section 2. This administrative regulation shall apply to the Plans as of July 1, 2007. Subject to the provisions of this administrative regulation, benefits paid from, and employee contributions made to, these Plans shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under 26 U.S.C. 415 and Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1.

Section 3. Basic 415(b) Limitation. (1) A member shall not receive an annual benefit that exceeds the dollar amount specified in 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in 26 U.S.C. 415(b) and Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1 and subject to any additional limits that are specified in this administrative regulation.

(2) A member's annual benefit payable in any limitation year from a Plan shall not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to 26 U.S.C. 415(d) and the Treasury Regulations located in 26 C.F.R. 1.415(a)-1 to 1.415(j)-1.

Section 4. Adjustments to Basic 415(b) Limitation for Form of Benefit. If the benefit under the Plan is other than the form specified in Section 3 of this administrative regulation, the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations located in 26 C.F.R. 1.415(b)-1.

Section 5. Benefits Not Taken into Account for 415(b) Limit. (1) For purposes of this administrative regulation, the following benefits shall not be taken into account in applying these limits:

(a) Any ancillary benefit which is not directly related to retirement income benefits;

(b) That portion of any joint and survivor annuity if the annuity is a qualified joint and survivor annuity; or

(c) Any other benefit not required under 26 U.S.C. 415(b)(2) and Treasury Regulations located in 26 C.F.R. 1.415(b)-1 to be taken into account for purposes of the limitation of 26 U.S.C. 415(b)(1).

Section 6. Other Adjustments in 415(b) Limitation. (1) If the members retirement benefits become payable before age sixty-two (62), the limit prescribed by this administrative regulation shall be reduced in accordance with Treasury Regulations located in 26 C.F.R. 1.415(b)-1 pursuant to the provisions of 26 U.S.C. 415(b), so that the limit (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to a $160,000 (as adjusted) annual benefit beginning at age sixty-two (62).

(2) The reductions provided for in subsection (1) of this section shall not be applicable to any preretirement disability benefits or preretirement death benefits.

Section 7. Less than Ten (10) Years of Service Adjustment for 415(b) Limitations. (1) The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under Section 4 of this administrative regulation multiplied by a fraction, the numerator of which is the number of the members years of service and the denominator of which is ten (10).

(2) The reduction provided by this section shall not reduce the maximum benefit below ten (10) percent.

(3) The reduction provided by this section shall not be applicable to any preretirement disability benefits or preretirement death benefits.

Section 8. Service Purchases Under Section 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under the Plan, the requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit.

(2) For purposes of applying this section, the Plan shall not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation under 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3) The Plan shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this section; or

(b) Any nonqualified service credit is taken into account under this section before the member has at least five (5) years of participation under the Plan.

(4) For purposes of subsection (3) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, nonqualified service credit shall be the permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3));

(b) Service as an employee (other than as an employee described in paragraph (a) of this subsection) of an educational organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or second-

ary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or

(d) Military service (other than qualified military service under 26 U.S.C. 414(u)) recognized by the Plan.

(5) For service described in subsection (4)(a), (b), or (c) of this section, the service shall be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one plan.

(6) For a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

(a) The limitations of subsection (3) of this section shall not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable to the Plan shall apply to these amounts and any benefits attributable to these amounts.

Section 9. Repayments of Cashouts. Any repayment of contributions (including interest) to the Plan with respect to an amount previously refunded upon a forfeiture of service credit under the Plan or another governmental plan maintained by the Commonwealth or a local government within the Commonwealth shall not be taken into account for purposes of the 415(b) or (c) limits.

JOSEPH E. LAMBERT, Chairman

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 12, 2010 at 3 p.m.

CONTACT PERSON: Alan D. Pauw, Legal Counsel, Kentucky Judicial Form Retirement System, Reed Weitkamp Schell & Vice PLLC, 500 W. Jefferson Street, Suite 2400, Louisville, Kentucky 40202, phone (502) 589-1000, fax (502) 562-2200.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, October 12, 2010)

102 KAR 1:320. Qualified domestic relations orders.

RELATES TO: KRS **161.220, 161.700, 403.190, 26 U.S.C. 414(p)[**~~161.700, 161.310, 26 U.S.C. sec. 414(p).~~**]**

STATUTORY AUTHORITY: KRS **161.310, 161.700[**~~161.700, 161.310~~**]**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Kentucky Teachers' Retirement System (KTRS) to promulgate all administrative regulations for the administration of the funds of the retirement system. KRS 161.700 requires the Board of Trustees of KTRS to promulgate administrative regulations setting forth the requirements, procedures, and forms for the approval and processing of qualified domestic relations orders impacting the benefits of participants of the retirement system.

Section 1. Definitions. (1) "Alternate Payee" is defined by KRS 161.220(26).

(2) "Benefits" means**[**~~, for purposes of this administrative regulation,~~**]** a monthly service or disability retirement allowance or refund payable at the request of a participant covered by KTRS who terminates employment in a KTRS covered position prior to becoming eligible to receive a retirement allowance.

(3) "Member" is defined by KRS 161.220(4).

(4) "Participant" is defined by KRS 161.220(24).

(5) "Qualified domestic relations orders" or "QDRO" is defined by KRS 161.220(25).

Section 2. (1) A QDRO shall state the following:

(a) The member's name, KTRS member identification number, and last-known mailing address;

(b) The alternate payee's name and last-known mailing address;

(c) Whether the order applies to an active account from which the member is not currently receiving a retirement allowance, or to a retired account from which the member is currently receiving a retirement allowance and the date on which the member retired the account;

(d) The date of marriage;

(e) The date of decree of dissolution of marriage;

(f) That the order is for the purpose of property division;

(g) The amount of the participant's monthly retirement allowance or termination refund to be paid by KTRS to the alternate payee as either;

1. A fixed dollar amount; or

2. The percentage calculated under Section 7(1) of this administrative regulation;

(h) When payments shall begin;

(i) When payments shall cease;

(j) That the alternate payee shall be paid in the same form as the participant;

(k) **If[**~~Whether~~**]** the alternate payee spouse shall share in the participant's cost of living adjustments if the QDRO awards a fixed dollar amount to **the[**~~such~~**]** alternate payee;

(l) Who shall be responsible for payment of the KTRS processing fee; and

(m)[~~(n)~~**]** All information required on the **Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits[**~~form incorporated by reference in this administrative regulation~~**]**.

(2) A QDRO shall be:

(a) Signed by the judge of a court of competent jurisdiction;

(b) Filed with the clerk of the court; and

(c) Certified by the clerk of the court.

Section 3. Administrative Provisions. (1) Thirty (30) days prior to filing the QDRO with KTRS, the participant or alternate payee shall present a written request for benefits information for divorce purposes. The participant, alternate payee, or third party, including the party's legal counsel, shall provide a completed KTRS Authorization for Release of Information form with the request.

(2)**(a)** For a QDRO directed to an active account from which a participant is not currently receiving a retirement allowance, KTRS shall forward a **KTRS** Report for Current Year Earnings and Contributions form to the participant's employer upon receipt of the written request and release.

(b) The employer shall return the completed form to KTRS within ten (10) work days.

(3) If the QDRO is directed to an account from which the participant is not currently receiving a retirement allowance, KTRS shall not project future earnings or future service. KTRS shall provide:

(a) The participant's total accrued service credit, including service credit purchased during the marriage, and the member account balance, including the total amount of accrued contributions and interest, as posted at the end of each fiscal year during the marriage and for which an employer annual report has been received by KTRS and for which the member has not received a refund; and

(b) An estimate of the monthly retirement allowance the participant would receive if the participant retired without a statutory reduction of the basic retirement allowance based upon the participant's final compensation and total accrued service credit as of the date of dissolution of marriage.

(4) If the participant has retired, KTRS shall provide the amount of the participant's monthly retirement allowance and the participant's total accrued service credit, including any service credit purchased during the marriage.

(5) The participant or alternate payee or legal counsel shall submit a Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits form to KTRS for review forty-five (45) days prior to filing the QDRO with the court. If more than one **(1)** of participant's accounts is subject to classification and division as marital property, a separate QDRO shall be issued for each KTRS account.

(6) KTRS shall not review the QDRO unless it is accompanied by the following:

(a) The KTRS Administrative **Regulatory[**~~Rule~~**]** Compliance

form, which has been approved by both the participant or alternate payee or their legal counsel;

(b) A **fifty (50) dollar[**~~$50.00~~**]** nonrefundable processing fee, by certified check or on the attorney's trust account, made payable to the Kentucky State Treasurer, except that a processing fee shall not be charged for a QDRO issued solely for child support;

(c) The KTRS Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number**,** and date of birth;

(d) Copies of the participant's and alternate payee's Social Security cards;

(e) **KTRS** Authorization for Direct Deposit form; and

(f) Any other documents that are required to confirm additional service credit purchased, or sought to be purchased, for retirement calculation purposes under KRS 161.220 through 161.716, including **KTRS** Military Service Certification and Affidavit form, with a copy of discharge papers.

(7) Within twenty (20) days of receipt of the QDRO, KTRS shall notify the participant and alternate payee in writing whether the QDRO meets KTRS requirements. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel.

(8) If the QDRO does not meet KTRS requirements, KTRS shall notify the participant and alternate payee in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel. The amended QDRO shall be submitted to KTRS for review and approval prior to filing with the court.

(9) If the QDRO is subsequently amended before filing with the court, the amended QDRO shall be resubmitted to KTRS with a **twenty-five (25) dollar[**~~$25.00~~**]** nonrefundable processing fee.

(10) Following approval by the court, the participant, alternate payee or legal counsel shall file a certified copy of the QDRO with KTRS.

(a) The QDRO shall not become effective until the certified copy is received by KTRS.

(b) Upon receipt of the certified copy, KTRS shall designate the participant's account for implementation of the QDRO.

(c) While a separate account balance shall not be maintained for the alternate payee, a separate payroll account shall be established.

(d) Payments to the alternate payee shall commence in the calendar month following the date that a certified copy of the QDRO is received by KTRS.

(11) If KTRS is enforcing a QDRO which is subsequently amended or terminated by the court, **then either** the participant, alternate payee**,** or legal counsel shall submit a certified copy of the amended QDRO or order of termination to KTRS for processing.

(12) The participant, alternate payee**,** or legal counsel shall not submit a QDRO that is not final and under consideration by an appellate court.

(13) The alternate payee shall be responsible for notifying KTRS of any change in name or mailing address.

(a) KTRS shall provide a Name or Change of Address form upon request.

(b) KTRS shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when an annuity benefit subject to the QDRO becomes payable.

(c) Other than sending **a notice as established in paragraphs (a) and (b) of this subsection[**~~such notice~~**]**, KTRS shall have no duty or responsibility to search for, or locate, the alternate payee.

(d) If the notification sent to the alternate payee's last known address is returned due to the alternate payee's failure to notify KTRS of an address change, within sixty (60) days of the return of the notification to the alternate payee, the amounts otherwise payable to the alternate payee shall be paid to the participant until a new address is provided by the alternate payee.

(e) KTRS shall have no liability to the alternate payee with respect to **[**~~such~~**]**amounts paid to the participant.

(14) The participant shall be responsible for notifying KTRS in writing of an event which causes benefit payments to the alternate payee spouse, child**,** or other dependent, to cease.

(a) The participant shall provide KTRS with a certified copy of the alternate payee's death certificate or marriage certificate.

(b) The alternate payee shall also be responsible for notifying KTRS in writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that terminates the alternate payee's right to receive any payments.

(c) KTRS shall not be responsible for payments made to the alternate payee until it is given timely written notice of any event terminating those payments.

Section 4. A QDRO may apply to a participant's: (1) Retirement allowance;

(2) Disability retirement allowance; or

(3) Termination refund.

Section 5. A QDRO shall not apply to a participant's: (1) Survivor annuity that becomes payable after the member's death;

(2) Survivor benefits that become payable after an active contributing member's death;

(3) Accounts that are not vested at the time of the dissolution of marriage;

(4) Life insurance benefit;

(5) Refund as a result of an error;

(6) Refund of an active or retired account in response to a member's death:

(7) Health insurance; and

(8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's annuity benefits and dies before the participant dies, retires**,** or withdraws his account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and payment. (1) The portion of the participant's benefits payable to the alternate payee shall be fifty **(50)[**~~(50%)~~**]** percent of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), multiplied by the following fraction:

(a) The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage; and

(b) The denominator of which shall be the participant's total full and fractional years of KTRS service credit through the date of dissolution of the marriage.

(2) If the participant is or will be receiving a disability retirement allowance, the participant's total annuity benefit for purposes of this administrative regulation shall be calculated under the service retirement formula established under KRS 161.661(5), even if the entitlement period described under KRS 161.661(3) and (4) has not expired.

(3) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, the participant's total annuity benefit shall be calculated without inclusion of the discounts required under KRS 161.620(1)(b) and (d).

(a) If at[~~However, if at the time of~~**]** retirement the participant is subject to discounts required under KRS 161.620(1)(b) and (d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are payable to the participant and to be paid to the alternate payee, KTRS shall reduce the amount to be paid to the alternate payee under the QDRO by the amount of the discounts.

(b) KTRS shall increase the amount paid to the alternate payee in amount equal to any discounts that are subsequently eliminated as the result of the participant's return to work after retirement under the provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement benefits.

(4) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, and the participant at **[**~~the time of~~**]** issuance of the QDRO is not eligible for calculation of his total annuity benefit based on his three (3) highest salaries as provided under KRS 161.220(9), then his total annuity benefit shall be calculated on his five (5) highest salaries.

(5) The participant may select any retirement option**,** but payment to the alternate payee shall be measured as though the participant had chosen Option I, Straight Life Annuity with Refundable Balance, under KRS 161.620 and 102 KAR 1:150.

Section 8. Any person who attempts to make KTRS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to KTRS for its costs and legal fees.

Section 9. KTRS and its staff shall have no liability for making or withholding payments in accordance with any of the provisions of this administrative regulation.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "KTRS Authorization for Release of Information", 14 July 2010;

(b) "KTRS Report for Current Year Earnings and Contributions", 14 July 2010;

(c) "Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits", 15 September[~~14 July~~] 2010;

(d) "KTRS Administrative Regulatory Compliance", 14 July 2010;

(e) "KTRS Confidential Information", 14 July 2010;

(f) "KTRS Authorization for Direct Deposit", 14 July 2010;

(g) "KTRS Military Service Certification and Affidavit", 14 July 2010; and

(h) "KTRS Name or Change of Address", 14 July 2010;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

BARBARA STERRETT, Chairperson

APPROVED BY AGENCY: September 10, 2010

FILED WITH LRC: September 14, 2010 at 8 a.m.

CONTACT PERSON: Robert B. Barnes, General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508 or fax (502) 848-8599.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, October 12, 2010)

102 KAR 1:330. Travel and administrative expenses.

RELATES TO: KRS 161.585

STATUTORY AUTHORITY: KRS 161.585

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.585 requires the Board of Trustees of Kentucky Teachers' Retirement System (KTRS) to promulgate an administrative regulation to recover travel and administrative expenses incurred when KTRS staff are required to produce records or provide testimony in response to a duly issued subpoena. **This administrative regulation establishes the procedures to recover travel and administrative expenses incurred when KTRS staff are required to produce records or provide testimony in response to a duly issued subpoena.**

Section 1. Definitions. (1) "Cabinet" means the Finance and Administration Cabinet.

(2) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed**[**~~,~~**]** and that has been designated by the secretary of the cabinet as a high rate area.

(3) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant**,** or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed**,** and a description of the expenditure.

Section 2. (1) Any person or party who requests a subpoena requiring the personal appearance of an employee of KTRS to appear in a court proceeding or at a deposition or administrative hearing shall pay KTRS for the travel expenses of the KTRS employee and KTRS' legal counsel, including:

(a) The then prevailing mileage rate;

(b) Parking and tolls;

(c) Meals, if the employee is required to be away from his work station before, during**,** or after working hours;

(d) Lodging expenses, if necessary; and

(e) The wages of the employee or legal counsel for the period he is required to be away from his work station which shall be calculated by multiplying the hourly rate of the employee or legal counsel by the number of hours each is required to be away from his work station.

(2) The mileage rate, meals, and lodging expenses, including those expenses incurred in a high rate area, shall be billed or reimbursed in accordance with the reimbursement rates established by the cabinet in 200 KAR 2:006.

(3) KTRS shall send an estimated amount for the expenses to the person or party requesting the subpoena.

(a) The person or party shall forward payment for the estimated expenses prior to the date of the appearance mandated by the subpoena.

(b)**1.** KTRS shall forward an invoice with supporting receipts for any additional expenses incurred by the employee or legal counsel or issue a refund for any amount in excess of the estimated expenses.

2. Any personal identifying information regarding the employee or legal counsel shall be redacted from the receipt prior to its release.

(4) Any person or party who requests a subpoena requiring the production of copies of records or information in the custody of KTRS in standard hard copy format shall pay KTRS a fee for**[**~~such~~**]** production which shall include:

(a) A copy charge of fifteen (15) cents per page;

(b) Postage based upon the weight of the package; and

(c) The wages of the employee required to compile or copy the requested records calculated by multiplying the hourly rate of the employee by the number of hours necessary to compile, copy**,** and collate the records or information.

(5) Any person or party who requests a subpoena requiring the production of records in the custody of KTRS in an electronic format which requires KTRS staff to write a program to extrapolate the requested information from the member's database to meet the specific request may recover staff costs at a rate of twenty-five **(25)[**~~($25.00)~~**]** dollars per hour.

(6) KTRS shall notify the person or party of the fee in writing. The person or party shall forward payment for the requested records prior to release of such records by KTRS.

BARBARA STERRETT, Chairperson

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 15, 2010 at 11 a.m.

CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 848-8508.

FINANCE AND ADMINISTRATIVE CABINET
Department of Revenue
Office of Sales and Excise Taxes
(As Amended at ARRS, October 12, 2010)

103 KAR 3:020. Sales and Telecommunications Forms manual.

RELATES TO: KRS 61.870-61.884, **131.010[**~~131.00~~**]**-131.130,

131.150[~~131.50~~**]**-131.240, [~~131.020, 131.030, 131.041-131.081, 131.081, 131.110, 131.130,131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1),~~] 134.580, 136.600-136.660, 139.010-139.795, [~~139.010, 139.185, 139.210, 139.230, 139.240, 139.250, 139.260, 139.270, 139.470, 139.480, 139.483, 139.495, 139.497, 139.515, 139.517, 139.518, 139.550, 139.570, 139.590, 139.620(1), 139.770(2), 139.778,~~] 144.132, 144.137, 154.20-206, 160.613-160.617, 224.01-310, 247.920

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration of Sales and Use Taxes and Telecommunications Excise and Gross Revenues Tax by the Department of Revenue.

Section 1. Sales and Use Tax - Required Forms. (1) Revenue Form 51A101(a), Sales and Use Tax Permit, shall be conspicuously displayed by the sales and use tax permit holder at the location for which the permit was issued.

(2) Revenue Form 51A101(b), Sales and Use Tax Permit Update, shall be issued by the Department of Revenue to update the Sales and Use Tax Permit with business name and address change information.

(3) Revenue Form 51A101(c)(1), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit, shall be issued to Model 1 Streamlined Sales and Use Tax filers registered in Kentucky and shall be conspicuously displayed by the SST permit holder at the location for which the permit was issued.

(4) Revenue Form 51A101(c)(2), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit, shall be issued to Model 2 Streamlined Sales and Use Tax filers registered in Kentucky and shall be conspicuously displayed by the SST permit holder at the location for which the permit was issued.

(5) Revenue Form 51A101(c)(4), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit, shall be issued to Model 4 Streamlined Sales and Use Tax filers registered in Kentucky and shall be conspicuously displayed by the SST permit holder at the location for which the permit was issued.

(6) Revenue Form 51A101(d), Sales and Use Tax Permit Update (SST), shall be issued by the Department of Revenue to update the Kentucky Streamlined Sales and Use Tax (SST) Filing Permit with business name and address change information.

(7) Revenue Form 51A102, Kentucky Sales and Use Tax Worksheet, shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(8) Revenue Form 51A102E, Kentucky Sales and Use Tax Worksheet - Electronic Funds Transfer, shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder who remits payment via electronic funds transfer to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(9) Revenue Form 51A103, Kentucky Accelerated Sales and Use Tax Worksheet, shall be completed by a Kentucky sales and use tax permit holder who has been designated as an accelerated filer to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due.

(10) Revenue Form 51A103E, Kentucky Accelerated Sales and Use Tax Worksheet - Electronic Funds Transfer, shall be submitted on a monthly basis by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due on an accelerated basis and remitted via electronic funds transfer.

(11) Revenue Form 51A105, Resale Certificate, shall be presented to a seller by a Kentucky sales and use tax permit holder to claim that the tangible personal property or digital property purchased from the seller will be:

(a) Resold in the regular course of business;

(b) Leased or rented; or

(c) Used as raw material, industrial supply or industrial tool.

(12) Revenue Form 51A109, Application for Energy Direct Pay Authorization (Sales and Use Tax and Utility Gross Receipts License Tax), shall be filed with the Department of Revenue by a manufacturer, processor, miner or refiner to apply for an energy direct pay authorization.

(13) Revenue Form 51A110, Direct Pay Authorization, shall be presented to a Kentucky sales and use tax permit holder by a company authorized to report and pay directly to the Department of Revenue the sales or use tax on all purchases of tangible personal property, or digital property excluding energy and energy-producing fuels.

(14) Revenue Form 51A111, Certificate of Exemption Machinery for New and Expanded Industry, shall be presented to a Kentucky sales and use tax permit holder by a manufacturer or production processor to claim exemption from sales and use tax.

(15) Revenue Form 51A112, Application for Direct Pay Authorization, shall be submitted by a registered sales and use tax permit holder wishing to obtain a direct pay authorization.

(16) Revenue Form 51A113, Kentucky Consumer's Use Tax Worksheet, shall be completed by a registered consumer's use tax permit holder and submitted to the Department of Revenue on a regular basis to report the amount of purchases of tangible personal property **or[**~~and~~**]** digital property subject to Kentucky use tax.

(17) Revenue Form 51A113(O)Consumer's Use Tax Return" shall be completed by a person storing, using, or otherwise consuming tangible personal property or digital property in Kentucky who is not registered for a consumer's use tax permit number.

(18) Revenue Form 51A115, Order for Selected Sales and Use Tax Publications, shall be presented to the Department of Revenue by anyone who wishes to order selected sales and use tax forms and regulations.

(19) Revenue Form 51A116, Use Tax Compliance Inquiry Worksheet, shall be completed by a purchaser of Watercraft, Aircraft, or other tangible or digital property to document if the purchase of the property is subject to the Kentucky Use Tax.

(20) Revenue Form 51A125, Application for Purchase Exemption Sales and Use Tax, shall be presented to the Department of Revenue by a resident 501C(3) charitable, educational, or religious institution; historical sites; and units of federal, state or local governments to apply for a sales and use tax exemption on purchases of tangible personal property**, digital property, or [**~~and digital property and~~**]** certain services to be utilized in the exempt entity's function.

(21) Revenue Form 51A126, Purchase Exemption Certificate, shall be presented to a retailer by a resident charitable, educational or religious institution or Kentucky historical site to claim exemption from sales and use tax on purchases of tangible personal property, digital property, or services.

(22) Revenue Form 51A127, Out-of-State Purchase Exemption Certificate, shall be presented to a retailer by an out-of-state agency or institution that is qualified for exemption in their state of residence.

(23) Revenue Form 51A128, Solid Waste Recycling Machinery Exemption Certificate, shall be presented to a retailer by a business or organization that claims exemption from sales and use tax on the purchase, lease or rental of machinery or equipment to be primarily used for recycling purposes to collect, source separate, compress, bale, shred or otherwise handle waste material.

(24) Revenue Form 51A129, Kentucky Sales and Use Tax Energy Exemption Annual Return, shall be submitted to the Department of Revenue by an energy direct pay holder to reconcile the actual amount of sales and use tax due on purchases of energy and energy-producing fuels to the total amount of sales and use tax paid based upon previous estimates of tax due.

(25) Revenue Form 51A130, Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carriers, shall be completed by a qualified certificated air carrier on a monthly basis to claim an aviation fuel tax credit against the company's sales and use tax liability for the month.

(26) Revenue Form 51A131, Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule, shall be completed by aviation fuel dealers selling aviation fuel in order to

determine the sales and use tax collected and remitted on the sale of aviation fuel, including jet fuel.

(27) Revenue Form 51A132, Kentucky Sales and Use Tax Equine Breeders Supplementary Schedule, shall be completed by an equine breeder to report taxable receipts from equine breeding fees.

(28) Revenue Form 51A135, Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule, shall be completed by motor vehicle dealers who collect Kentucky sales tax on the sale of motor vehicles to residents of states who subject Kentucky residents to sales upon the purchase of motor vehicles in their states.

(29) Revenue Form 51A143, Purchase Exemption Certificate - Watercraft Industry, shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of tangible personal property that will be used for the direct operation of watercraft in the activity of transporting property or in conveying persons for hire.

(30) Revenue Form 51A149, Certificate of Exemption for Pollution Control Facilities, shall be presented to a retailer by a holder of a pollution control tax exemption certificate or jointly by a contractor and the holder of a pollution control tax exemption certificate to claim exemption from sales and use tax on the purchase of materials and equipment that will become part of a certified pollution control facility.

(31) Revenue Form 51A150, Aircraft Exemption Certificate, shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of aircraft, repair and replacement parts for the aircraft, and supplies that will be used for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire.

(32) Revenue Form 51A154, Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers, shall be completed in triplicate by the seller and buyer when the sale of the tangible personal property occurs and the seller makes delivery of the tangible personal property out of state, and also completes the affidavit portion of the form within two (2) days of the time of delivery to claim that the property was purchased exempt from sales tax and delivered immediately out of state not to return to Kentucky for use.

(33) Revenue Form 51A157, Certificate of Exemption - Water Used in Raising Equine, shall be presented to a retailer by a person regularly engaged in raising equine as a business to claim exemption for the purchase of water used to raise equine.

(34) Revenue Form 51A158, Farm Exemption Certificate, shall be presented to a retailer by a person regularly engaged in the occupation of tilling and cultivating the soil for the production of crops, raising and feeding livestock or poultry; or raising and feeding llamas, alpacas, ratites, buffalo, aquatic organisms, or cervids to claim exemption from sales and use tax on the purchase of certain tangible personal property.

(35) Revenue Form 51A159, On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment, shall be presented to a retailer by a farmer or jointly by a farmer and a contractor to claim exemption from sales and use tax on the purchase of materials, machinery and equipment which will be incorporated into the construction, repair, or renovation of on-farm facilities exempt under the provisions of KRS 139.480.

(36) Revenue Form 51A160, Application for Truck Part Direct Pay Authorization, shall be filed with the Department of Revenue by the owner of a motor vehicle, including a towed unit, qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(a) to apply for the truck part direct pay authorization.

(37) Revenue Form 51A161, Truck Part Direct Pay Authorization, shall be issued by the Department of Revenue to authorize motor carriers to report and pay directly to the department the sales and use tax on all purchases of repair and replacement parts for motor vehicles and to authorize retailers to sell motor vehicle repair and replacement parts directly to the authorized motor carrier without receipt of sales and use tax.

(38) Revenue Form 51A163, Application for Charter Bus Part Direct Pay Authorization, shall be filed with the Department of Revenue by the owner of a charter bus qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(b) to apply for a charter bus direct pay authorization.

(39) Revenue Form 51A164, Charter Bus Direct Pay Authorization, shall be issued by the Department of Revenue to authorize charter bus carriers to report and pay directly to the Department the sales and use tax on all purchases of repair and replacement parts for charter buses, and to authorize retailers to sell charter bus repair and replacement parts directly to the charter bus carriers without receipt of sales and use tax.

(40) Revenue Form 51A200, Application for Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program, shall be used by qualified businesses to apply for a refund of sales and use tax paid on purchases of materials used in an approved project.

(41) Revenue Form 51A205, Kentucky Sales and Use Tax Instructions, shall be used by Kentucky sales and use tax permit holders as a guide in filing their sales and use tax returns and maintaining permit account information.

(42) Revenue Form 51A209, Sales and Use Tax Refund Application, shall be completed by a Kentucky sales and use tax permit holder and submitted to the Department of Revenue within four (4) years from the date the tax was paid to apply for a refund of sales and use tax previously paid by the permit holder.

(43) Revenue Form 51A216, Application for Pollution Control Tax Exemption Certificate, shall be completed by a business, governmental unit or institution to apply for a sales and use tax exemption on purchases of tangible personal property used to control or abate pollution.

(44) Revenue Form 51A222, Certificate of Exemption for Alcohol Production Facilities, shall be presented to a retailer by a holder of an alcohol production tax exemption certificate or jointly by a contractor and the holder of an alcohol production tax exemption certificate to claim exemption from sales and use tax on materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(45) Revenue Form 51A223, Application for Alcohol Production Facility Tax Exemption Certificate, shall be completed by a business seeking exemption from sales and use tax on the purchase of materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(46) Revenue Form 51A226, Pollution Control Tax Exemption Certificate, shall be issued by the Department of Revenue to a business who has qualified for certain sales and use tax, corporation income, corporation license, and property tax benefits.

(47) Revenue Form 51A227, Certificate of Resale (Schools), shall be issued to a retailer by an exempt nonprofit elementary or secondary school or the organizations they sponsor or that are affiliated with them to claim an exemption from sales and use tax on the purchase of tangible personal property **or[**~~and~~**]** digital property that will be resold if the proceeds from the resale of the property is used solely for the benefit of the elementary or secondary schools or their students.

(48) Revenue Form 51A228, Application for Fluidized Bed Combustion Technology Tax Exemption Certificate, shall be completed by a business, governmental unit or organization and submitted to the Department of Revenue to apply for a sales and use tax exemption on the purchase of equipment and materials used in fluidized bed combustion technology.

(49) Revenue Form 51A229, Fluidized Bed Combustion Technology Tax Exemption Certificate, shall be issued by the Department of Revenue to a business, governmental unit or organization to advise that they qualify for corporation license tax, property tax, and sales and use tax benefits.

(50) Revenue Form 51A241, Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies, shall be completed by a motion picture production company and submitted to the Department of Revenue to register for a sales and use tax refund.

(51) Revenue Form 51A242, Application for Sales and Use Tax Refund for Motion Picture Production Company, shall be completed by a registered motion picture production company and submitted to the Department of Revenue within sixty (60) days after completion of the filming or production of the motion picture in Kentucky to request a refund of the Kentucky sales and use tax paid on purchases of tangible personal property **or[**~~and~~**]** digital property made in connection with filming and producing motion

pictures in Kentucky.

(52) Revenue Form 51A250, Application for Transient Merchant Permit, shall be completed by a transient merchant and filed with the clerk in the county in which the business is to be conducted, or if an urban county government, with the officer of the government who has responsibility for the issuance of business permits and licenses to obtain a permit before conducting any business in Kentucky.

(53) Revenue Form 51A260, Streamlined Sales and Use Tax Agreement-Certificate of Exemption, shall be presented to a seller by a purchaser to claim that tangible personal property, digital property**, or[**~~and~~**]** certain services purchased from the seller qualifies for exemption.

(54) Revenue Form 51A270, Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle, shall be issued by motor vehicle dealers to a non-resident purchaser of a motor vehicle on which the Kentucky sales tax has been paid.

(55) Revenue Form 51A280, Out-Of-State Purchase-Use Tax Affidavit, shall be submitted to the county clerk by a taxpayer purchasing tangible personal property from out-of-state for title or first-time registration.

(56) Revenue Form 51A290, Information Sharing and Assignment Agreement for Designated Refund Claims, shall be submitted by an approved company or agency and its vendors and contractors who agree to share documentation with the Department of Revenue for refund claim under the Kentucky Enterprise Initiative Act, Signature Project, or Alternative Fuel, Gasification or Renewable Energy Facility.

(57) Revenue Form 51A291, Application for Kentucky Signature Project Sales and Use Tax Refund, shall be completed by an approved company or agency in the construction of an approved Signature Project submitted to the Department of Revenue annually during the (12) years the project grant agreement is in effect.

(58) Revenue Form 51A292, Expenditure Report for Signature Project Refunds, shall be submitted by a refund applicant to document expenditures and taxes paid on property and materials used in the construction of an approved Signature Project.

(59) Revenue Form 51A300, Application for Preapproval for Energy Efficiency Machinery or Equipment, shall be submitted by a person engaged in manufacturing for preapproval for purchase of new or replacement machinery or equipment that reduces the consumption of energy or energy producing fuels by at least fifteen (15) percent.

(60) Revenue Form 51A301, Application for Kentucky Alternative Fuel, Gasification, and Renewable Energy Facility Sales and Use Tax Refund, shall be submitted by a refund applicant to request refund of sales and use tax paid on purchases of building and construction materials purchased and used in the construction of an approved Alternative Fuel, Gasification, or Renewable Facility.

(61) Revenue Form 51A302, Expenditure Report for Alternative Fuel, Gasification, & Renewable Energy Facility Refunds, shall be submitted by a refund applicant to document expenditures and taxes paid on property and materials used in the construction of an approved Alternative Fuel, Gasification, or Renewable Energy Facility.

(62) Revenue Form 51A350, Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive, shall be submitted by an approved company or agency and its vendors and contractors who agree to share documentation with the Department of Revenue for refund claims on construction of an approved Alternative Fuel, Gasification, or Renewable Energy Facility.

(63) Revenue Form 51A351, Application for Energy Efficiency Machinery or Equipment Sales and Use Tax Incentive, shall be submitted by a refund applicant to request refund of sales and use tax paid on purchases of approved energy-efficiency machinery or equipment used at a manufacturing plant.

(64) Revenue Form 51A400, Governmental Public Facility Sales Tax Rebate Registration, shall be completed by the public facility to determine eligibility for the sales tax rebate under KRS 139.533.

(65) Revenue Form 51A401, Governmental Public Facility Application for Sales Tax Rebate, shall be completed by the Public Facility to request **a** sales tax **rebate[**~~rebate(s)~~**]**. It includes a list of vendors and tax amounts claimed in the rebate request as well as banking information if an electronic fund transfer is requested by the Public Facility

(66) Revenue Form 51A402, Vendor Assignment Agreement for Sales at a Qualifying Public Facility**,** shall be properly executed for any seller, other than the qualifying governmental entity whose receipts are included in the rebate request.

(67)[~~(64)~~] Revenue Form 51F008, Federal Government Exemption from Kentucky Sales and Use Tax, shall be issued by the Department of Revenue to a federal government unit which in turn is presented to a retailer by the federal government unit to claim exemption from sales and use tax on purchases of[~~tangible personal~~] property to be used in the exempt governmental function.

(68)[~~(65)~~] Revenue Form 51F009, Purchase Exemption Notification, shall be issued by the Department of Revenue to a resident nonprofit charitable, educational or religious institution to advise the entity of the assigned purchase exemption number and additional information concerning the exemption from sales and use tax.

(69)[~~(66)~~] Revenue Form 51F010, Energy Direct Pay Authorization, shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for the sales and use tax and that they are required to report and pay directly to the Department of Revenue the sales and use tax on that portion of the cost price which is subject to tax pursuant to KRS 139.480(3).

(70)[~~(67)~~] Revenue Form 51F010(a), Utility Gross Receipts License Tax (UGRLT) Exemption Authorization, shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for the utility gross receipts license tax and that they are required to report and pay directly to the Department of Revenue the utility gross receipts license tax on that portion of the purchase price which is subject to tax.

(71)[~~(68)~~] Revenue Form 51F010(b), Energy Direct Pay - Utility Gross Receipts License Tax Exemption Authorization, shall be issued by the Department of Revenue to advise a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for either the sales and use tax or the utility gross receipts license tax and that they are required to report and pay directly to the Department of Revenue the sales and use tax and the utility gross receipts license tax on that portion of the purchase price which is subject to tax.

Section 2. Telecommunications Provider Tax-Required Forms. (1) Revenue Form 75A001, Telecommunications Tax Receipts Certification Form, shall be used by city and county taxing jurisdictions to certify tax receipts for prior fiscal year if applicable.

(2) Revenue Form 75A002, Telecommunications Provider Tax Return, shall be used by telecommunications providers to report gross revenues subject to the excise tax and gross revenues tax, and by consumers to report retail purchases of multi-channel video programming services to report the tax due.

(3) Revenue Form 75A002 (I), Instructions for Telecommunications Provider Tax Return, shall be used by telecommunications providers as a guide in filing their telecommunications provider tax return.

(4) Revenue Form 75A005, Telecommunications Tax Complaint Form", shall be submitted to the Department of Revenue by local taxing authorities who express disagreement with the distribution of telecommunications tax to their jurisdiction.

(5) Revenue Form 75A900, Telecommunications Tax Application, shall be used by telecommunications providers to register with the Department of Revenue.

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

(a) Sales and use tax - referenced material:

1. Revenue Form 51A101(a), "Sales and Use Tax Permit", August 2008;

2. Revenue Form 51A101(b), "Sales and Use Tax Permit Up-

date", August 2008

3. Revenue Form 51A101(c)(1), "Kentucky Streamlined Sales and Use Tax (SST) Filing Permit", August 2008;

4. Revenue Form 51A101(c)(2), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit", August 2008;

5. Revenue Form 51A101(c)(4), Kentucky Streamlined Sales and Use Tax (SST) Filing Permit", August 2008;

6. Revenue Form 51A101(d), "Sales and Use Tax Permit Update (SST)", August 2008;

7. Revenue Form 51A102, "Kentucky Sales and Use Tax Worksheet", January 2010[~~January 2008~~];

8. Revenue Form 51A102E, "Kentucky Sales and Use Tax Worksheet - Electronic Funds Transfer", January 2010[~~January 2009~~];

9. Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Worksheet", January 2010[~~January 2009~~];

10. Revenue Form 51A103E, "Kentucky Accelerated Sales and Use Tax Worksheet - Electronic Funds Transfer", January 2010[~~January 2009~~];

11. Revenue Form 51A105, "Resale Certificate", December 2009[~~January 2005~~];

12. Revenue Form 51A109, "Application for Energy Direct Pay Authorization (Sales and Use Tax and Utility Gross Receipts License Tax)", September 2006;

13. Revenue Form 51A110, "Direct Pay Authorization", June 2010[~~August 1997~~];

14. Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", December 2008;

15. Revenue Form 51A112, "Application for Direct Pay Authorization", December 2009[~~March 2005~~];

16. Revenue Form 51A113, "Kentucky Consumer's Use Tax Worksheet", January 2010[~~July 2005~~];

17. Revenue Form 51A113(O), "Consumer's Use Tax Return", December 2009[~~August 2005~~];

18. Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", April 2008;[~~;~~]

19. Revenue Form 51A116, "Use Tax Compliance Inquiry Worksheet", March 2008;

20. Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", December 2009[~~January 2008~~];

21. Revenue Form 51A126, "Purchase Exemption Certificate", December 2009[~~August 2004~~];

22. Revenue Form 51A127, "Out-of-State Purchase Exemption Certificate", December 2009[~~April 2007~~];

23. Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate", March 2005;

24. Revenue Form 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", December 2008;

25. Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carriers ", August 2005;

26. Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", August 2008;

27. Revenue Form 51A132, "Kentucky Sales and Use Tax Equine Breeders Supplementary Schedule", June 2005;

28. Revenue Form 51A135, "Kentucky Sales Tax Motor Vehicle Sales Supplementary Schedule", August 2006;

29. Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Industry", March 2005;

30. Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", January 2007;

31. Revenue Form 51A150, "Aircraft Exemption Certificate", January 2005;

32. Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV), Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", January 2005;

33. Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", July 2005;

34. Revenue Form 51A158, "Farm Exemption Certificate", July 2008;

35. Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", July 2008;

36. Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", March 2005;

37. Revenue Form 51A161, "Truck Part Direct Pay Authorization", December 2006;

38. Revenue Form 51A163, "Application for Charter Bus Part Direct Pay Authorization", June 2005;

39. Revenue Form 51A164, "Charter Bus Direct Pay Authorization", August 2006.

40. Revenue Form 51A200, "Application for Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program", March 2008;

41. Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", July 2008;

42. Revenue Form 51A209, "Sales and Use Tax Refund Application", May 2007;

43. Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", March 2005;

44. Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", January 2007;

45. Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", July 1980;

46. Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", March 2005;

47. Revenue Form 51A227, "Certificate of Resale (Schools)", May 2007;

48. Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", May 2007;

49. Revenue Form 51A229, "Fluidized Bed Combustion Technology Tax Exemption Certificate", January 2008;

50. Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", May 2007;

51. Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", May 2007;

52. Revenue Form 51A250, "Application for Transient Merchant Permit", April, 2005;

53. Revenue Form 51A260, "Streamlined Sales and Use Tax Agreement - Certificate of Exemption", February 2010[~~August 2008~~];

54. Revenue Form 51A270, "Certificate of Sales Tax Paid on the Purchase of a Motor Vehicle", August 2006;

55. Revenue Form 51A280, "Out-Of-State Purchase-Use Tax Affidavit", July 2009[~~July 2007~~];

56. Revenue Form 51A290, "Information Sharing and Assignment Agreement for Designated Refund Claims", October 2007;

57. Revenue Form 51A291, "Application for Kentucky Signature Project Sales and Use Tax Refund", October 2007;

58. Revenue Form 51A292, "Expenditure Report for Signature Project Refunds", October 2007;

59. Revenue Form 51A300, "Application for Preapproval for Energy Efficiency Machinery or Equipment", June 2008;

60. Revenue Form 51A301, "Application for Kentucky Alternative Fuel, Gasification, and Renewable Energy Facility Sales and Use Tax Refund", December 2008;

61. Revenue Form 51A302, "Expenditure Report for Alternative Fuel, Gasification, & Renewable Energy Facility Refunds", December 2008;

62. Revenue Form 51A350, "Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive", June 2008;

63. Revenue Form 51A351, "Application for Energy Efficiency Machinery or Equipment Sales and Use Tax Incentive", June 2008;

64. Revenue Form 51A400, "Governmental Public Facility Sales Tax Rebate Registration", June 2010;

65. Revenue Form 51A401, "Governmental Public Facility Application for Sales Tax Rebate", June 2010;

66. Revenue Form 51A402, "Vendor Assignment Agreement for Sales at a Qualifying Public Facility", June 2010;

67.[~~64.~~] Revenue Form 51F008, "Federal Government Exemption from Kentucky Sales and Use Tax", January 2008;

68.[~~65.~~] Revenue Form 51F009, "Purchase Exemption Notification", January 2008;

69.[~~66.~~] Revenue Form 51F010, "Energy Direct Pay Authorization", January 2008;

70.[~~67.~~] Revenue Form 51F010(a), "Utility Gross Receipts

License Tax (UGRLT) Exemption Authorization", January 2008; and

71.[~~68.~~] Revenue Form 51F010(b), "Energy Direct Pay - Utility Gross Receipts License Tax Exemption Authorization", January 2008;

(b) Telecommunications provider tax - referenced material:

1. Revenue Form 75A001, "Telecommunications Tax Receipts Certification Form", December 2005;

2. Revenue Form 75A002, "Telecommunications Provider Tax Return", March 2006[~~December 2005~~];

3. Revenue Form 75A002(I), "Instructions for Telecommunications Provider Tax Return", July 2006;

4. Revenue Form 75A005, "Telecommunications Tax Complaint Form", October 2006; and

5. Revenue Form 75A900, "Telecommunications Tax Application", December 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 12, 2010 at 9 a.m.

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.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(As Amended at ARRS, October 12, 2010)

103 KAR 18:070. Supplemental wages and other payments subject to withholding.

RELATES TO: KRS 141.010(22), 141.020, 141.310, 141.315, 341.020, 341.090, 341.395, 26 U.S.C. 3402(q)

STATUTORY AUTHORITY: KRS 141.050(4), 141.310(8), 141.315

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary **for[**~~to~~**]** the proper administration of any and all provisions of KRS Chapter 141. KRS 141.310(8) **authorizes [**~~allows~~**]** the department to **promulgate an[**~~provide by~~**]** administrative regulation for withholding in addition to **those[**~~that otherwise~~**]** provided in KRS 141.310 and 141.315 **if[**~~in cases in which~~**]** the employer and employee agree to additional withholding. KRS 141.315 requires the department to promulgate administrative regulations governing certain specified types of payments. This administrative regulation prescribes procedures for withholding income tax on gambling winnings, supplemental wages, [~~and~~]vacation pay, and unemployment benefits.

Section 1. Definitions. (1) "**Benefit year" is defined by KRS 341.090(3).**

(2) "Benefits" is [~~"Benefits" are~~**]** defined by KRS 341.020(4). **[**~~(2) "Benefit Year" is defined by KRS 341.090(3).~~**]**

(3) "Cabinet" means the Education and Workforce Development Cabinet.

(4) "Department" is defined by KRS 141.010(2).

(5) "Fund" is defined by KRS 341.020(1).

(6) "Gambling winnings" means winnings that are subject to withholding as defined by 26 U.S.C. 3402(q) of the Internal Revenue Code.

(7)[~~(2)~~] "Supplemental wages" means payments made to an employee by the individual's employer in addition to regular wages.

Section 2. Gambling Winnings. Every person making a payment of gambling winnings shall deduct and withhold from the payment Kentucky income tax at the maximum tax rate provided in KRS 141.020.

Section 3. Supplemental Wages. **(1)** If supplemental wages are paid at the same time as regular wages, the tax to be withheld shall be determined as if the aggregate of the supplemental and regular wages were a single wage payment for the regular payroll period.

(2) If supplemental wages are paid at a different time, the employer shall determine the tax to be withheld by aggregating the supplemental wages either with the regular wages for the current payroll period or with the regular wages for the last preceding payroll period within the same calendar year.

Section 4. Vacation Pay. **(1)** If an employee receives vacation pay for the time of a vacation absence, the vacation pay shall be subject to withholding as though it were a regular wage payment made for the payroll period or periods which occur during the vacation.

(2) If vacation pay is paid in addition to regular wages to an employee who forgoes his vacation, the payments shall be treated as supplemental wages.

Section 5. Unemployment Benefits. (1) An individual filing a new claim for benefits shall**:**

(a) Be notified of the requirements established in KRS 341.395(1); and

(b) Indicate on the Initial Claim Application, Form 401, incorporated by reference in 787 KAR 1:090, if the individual elects to have the state income tax imposed by KRS 141.020 deducted and withheld from the individual's benefits at the rate of four (4) percent.

(2)[~~, at the time of filing such claim, be advised by the cabinet that benefits are subject to federal and state income tax, requirements exist pertaining to estimated tax payments, and the individual may elect to have the tax imposed by KRS 141.020 deducted and withheld from the individual's benefits at the rate of four (4) percent.~~

~~(2) The individual making an election under subsection one (1) of this section shall be permitted to change a previously elected Kentucky withholding status one (1) time during the individual's benefit year.~~

~~(3)~~**]** The amounts deducted and withheld from benefits pursuant to subsection **[**~~one~~**]** (1) of this section shall remain in the unemployment insurance fund until transferred to the department as a payment of income tax **in accordance with the priority order established in 787 KAR 1:320**. **[**~~If two (2) or more deductions are made from an individual's benefits, then the deductions shall be deducted and withheld in accordance with priorities established by the cabinet.~~**]**

(3)[~~(4)~~**]** The cabinet shall follow all procedures pertaining to the deducting and withholding of income tax **specified in KRS 341.395(3) or by the department[**~~from benefits by the department, the United States Department of Labor, and the Internal Revenue Service~~**]**.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 15, 2010

FILED WITH LRC: July 15, 2010 at 8 a.m.

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.

GENERAL GOVERNMENT CABINET
Department of Military Affairs
Military Family Assistance Trust Fund Board
(As Amended at ARRS, October 12, 2010)

106 KAR 2:020. Military Family Assistance Trust Fund.

RELATES TO: KRS 36.470, 36.474, 36.476

STATUTORY AUTHORITY: KRS 36.474(3), (5)

NECESSITY, FUNCTION AND CONFORMITY: KRS 36.470 establishes the military family assistance trust fund. KRS 36.474(3), (5) require the board to promulgate an administrative regulation establishing the maximum amount of grant assistance a person may receive in a twelve (12) month period and to establish a need-based application for trust fund grants. This administrative regulation establishes the application process and the maximum amount of grant assistance as required by KRS 36.474.

Section 1. Military Family Assistance Trust Fund Board. The board shall receive a report on all funds expended on applications and shall be informed on the reason for any application being disapproved.

Section 2. Application for Trust Funds. Any qualified service member or the service member's Kentucky resident spouse may submit a "Kentucky Military Family Assistance Trust Fund Application, DMA Form 43-1" for application of grant funds for a need-based emergency.

Section 3. Payment of Grants. (1) Except as provided in subsection (2) of this section, the following limits shall apply:

(a) A maximum of **$10,000[**~~$2,500~~**]** may be approved for a single application as identified on DMA Form 43-1; and

(b) A maximum of $10,000[~~$5,000~~] may be approved per fiscal year per service member. An award made to the family of a service member shall be included in the amount calculated as awarded to the service member.

(2) Amounts greater than the $10,000[~~$2,500 single application cap and $5,000~~] fiscal year maximum cap may be approved by a majority vote of the board members if there is:

(a) A catastrophic event, including a tornado, fire, earthquake, or other disastrous event; or

(b) At least a twenty-five (25) percent loss of annual income by the service member or spouse that is caused by the deployment compared to what the service member's or spouse's annual income was prior to deployment.

(3) The applicant shall submit appropriate documentation to verify**:[**~~;~~**]**

(a) The applicant's financial need; and

(b) Other assistance that is provided or not provided by other sources.

Section 4. Incorporation by Reference. (1) "Kentucky Military Family Assistance Trust Fund Application, DMA Form 43-1", 1 May 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Administrative Services Division, Office of Management and Administration, Department of Military Affairs, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168, or by calling the Office at phone (502) 607-1156 or (502) 607-1738, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. BULLARD, Director,
JUDY GREENE-BAKER, COL (USAR), Chair of Board
EDWARD W. TONINI, MAJ. GEN., The Adjutant General

APPROVED BY AGENCY: July 12, 2010

FILED WITH LRC: July 15, 2010 at 10 a.m.

CONTACT PERSON: Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone fax number is 502-607-1240.

GENERAL GOVERNMENT CABINET
Department for Local Government
(As Amended at ARRS, October 12, 2010)

109 KAR 15:020. County Budget Preparation and State Local Finance Officer Policy Manual.

RELATES TO: KRS 42.495, 43.070, 46.010, 46.020, 64.810, 64.840, 64.850, 65.117[~~65.7719~~], 65.900-65.925, 65.944, 66.045, 66.480, 67.075-67.077, 68.020, 68.210, 68.245, 68.250, 68.275, 68.280, 68.300, 686.350, 68.360, 91A.040(6), 132.010, 132.0225, 132.585, 149.590, 424.220, 424.230, 424.260, 441.135, 441.215, 441.235

STATUTORY AUTHORITY: KRS 46.010, 65.117, **[**~~66.045(2)~~**][**~~(3)~~**]**, 68.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 46.010, 65.117, **and 68.210 require the Department for Local Government to promulgate administrative regulations establishing [**~~66.045(2)~~**][**~~(3)~~**][**~~, and 68.210 require~~**]** uniform minimum requirements relating to budgeting, reporting and recordkeeping for debt, receipts, and disbursements for local governments and local government officials handling public funds. This administrative regulation establishes the standards for budgeting, reporting, and recordkeeping for debt, receipts, and disbursements for local governments and local government officials handling public funds.

Section 1. Applicability. (1) **All county officials shall follow the County Budget Preparation and State Local Finance Officer Policy Manual which contains, in part, a uniform system of accounts. [**~~The County Budget Preparation and State Local Finance Officer Policy Manual contains, in part, a uniform system of accounts which shall be followed by all county officials.~~**]**

(2) **County, district, and other local officers and agencies shall follow the County Budget Preparation and State Local Finance Officer Policy Manual for purposes of a uniform system of accounting and reporting on the receipt, use, and handling of public fund, other than taxes, due and payable to the state. [**~~The County Budget Preparation and State Local Finance Officer Policy Manual also prescribes a uniform system of accounting and reporting on the receipt, use, and handling of public funds, other than taxes, due and payable to the state from county, district, and other local officers and agencies.~~

~~(3) The County Budget Preparation and Sate Local Finance Officer Policy Manual is partially advisory in nature to all local government officials since, pursuant to KRS 68.210, the accounts and operations of all local government officers are subject to examination by the State Local Finance Officer.~~**]**

Section 2. Incorporation by Reference. (1) The "County Budget Preparation and State Local Finance Officer Policy Manual", January 2011,[~~October 2007,~~"] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Local Government[~~Governor's Office for Local Development~~], 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TONY WILDER, Commissioner

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 12, 2010 at 4 p.m.

CONTACT PERSON: Andrew S. Hartley, Staff Attorney, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, phone (502) 573-2382, fax (502) 573-2939.

GENERAL GOVERNMENT
Board of Licensure for Professional Engineers and Land Surveyors
(As Amended at ARRS, October 12, 2010)

201 KAR 18:150. Standards of practice.

RELATES TO: KRS 322.290(1)(a), (2)(f)

STATUTORY AUTHORITY: KRS 322.290(2)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.290(1)(a) authorizes the board to administer KRS Chapter 322. KRS 322.290(2)(f) requires the board to establish standards of practice. This administrative regulation establishes standards of practice for professional land surveyors in Kentucky.

Section 1. Definitions. (1) "Boundary" means the perimeter of a

parcel or tract of land.

(2) "Boundary survey" means a survey to:

(a) Determine either the entire perimeter of a parcel or tract of land, or a portion of the perimeter of a parcel or tract of land; **[**~~or~~**]**

(b) Establish or reestablish a parcel or tract of land's corner or monument; or

(c) Divide or consolidate the parcels or tracts of land surveyed.

(3) "Completion Date of Survey" means the last date when all the monuments were either found or set for the plat of survey area.

(4) "Corner" means a point that designates a change in the direction of the boundary.

(5) "Field work" means that work performed by a land surveyor on the ground in connection with the parcel or tract being surveyed.

(6) "GIS" means Geographic Information System and is any system that captures, stores, analyzes, manages, and presents data that are linked to a land location and is the merging of cartography and database technology.

(7) "GNSS" means Global Navigation Satellite Systems. The standard generic term for satellite navigation systems that provide autonomous geo-spatial positioning with global coverage.

(8) "GPS" means the United States NAVSTAR Global Positioning System, a space-based global navigation satellite system that when used in conjunction with suitable GPS receivers and processing software, provides reliable location information to the level of precision specified in this administrative regulation, in all weather and at all times and anywhere on the earth where there is an unobstructed line of sight to four (4) or more GPS satellites. **[**~~It is maintained by the United States government and is freely accessible by anyone with a GPS receiver.~~**]**

(9) "Meander point" means a survey point or station marking a change in direction along a linear feature such as a watercourse, ridge, road, or cliff.

(10) "Monument" means an artificial, manmade or natural object that is used as, or presumed to occupy, any of the following locations:

(a) A property corner;

(b) A point on the boundary; or

(c) A reference point.

(11) "Plat" means any representational drawing created by a land surveyor reflecting work falling within the definition of land surveying.

(12) "Plat of survey" means a finished drawing of a completed survey of a parcel or tract of land, used to depict the final results of a boundary survey, drawn on a dimensionally stable media suitable for reproduction of copies.

(13) "Point on Line" means a point on a boundary line other than a corner.

(14) "Reference monument" means a monument:

(a) That does not occupy the same defined position as a property corner; and

(b) Whose relationship to the corner of the property is established by bearing and distance to the actual corner.

(15) "Relative Positional Accuracy" means the value expressed in feet that represents the uncertainty due to random errors in measurements in the location of any point on a survey relative to any other point on the same survey at the 95 percent confidence level.

(16) "Retracement survey" means a boundary survey of an existing parcel or tract of land.

Section 2. Application. (1) Boundary surveys. The standards of practice established in Sections 1 through 12 of this administrative regulation:

(a) Shall apply to the work product related to:

1. Boundary surveys used for the purpose of creating, depicting, or locating interests in land; **[**~~and~~**]**

2. Partial surveys; **[**~~and~~**]**

3. Boundary surveys of leases; and

4. Deed descriptions written by professional surveyors**;[**~~.~~**]**

(b) Shall be the minimum standards of practice for a professional land surveyor; and

(c) Shall not limit the establishment of more stringent standards of practice for a professional land surveyor by:

1. An agency;

2. An owner;

3. A contract; or

4. The professional land surveyor.

(d) Shall not apply to surveys to determine or define political areas **including [**~~such as~~**]** historical, school, fire, voting, utility or magisterial districts, municipal or county limits, or governmental permit limits.

(2) Land surveying work other than boundary surveys. The standards of practice established in Sections 1, 2, 3, and 13 of this administrative regulation:

(a) Shall apply to the work of the professional land surveyor falling within the definition of land surveying, but not falling within the definition of a boundary survey; **[**~~and~~**]**

(b) Shall be the minimum standards of practice for a professional land surveyor for **that[**~~such~~**]** work; and

(c) Shall not limit the establishment of more stringent standards of practice for a professional land surveyor by:

1. An agency;

2. An owner;

3. A contract; or

4. The professional land surveyor.

Section 3. Compliance. (1) Failure to comply with this administrative regulation shall constitute misconduct, gross negligence, incompetence, or a combination of these violations in the practice of professional land surveying.

(2) A professional land surveyor shall not represent that:

(a) A boundary survey determines land ownership; or

(b) A boundary survey provides more than evidence of rights in land; or

(c) Land ownership can be established by any survey

Section 4. Actual Boundary Survey. (1) The marks and monuments on the ground as found and verified, or as set by a professional land surveyor shall constitute the actual boundary survey.

(2) Any plat of survey shall accurately represent the actual boundary survey.

(3) Record research and field work required by the provisions of this administrative regulation:

(a) Shall be used by a professional land surveyor to determine the location of the boundary of the property to be surveyed; and

(b) Shall not be used by a professional land surveyor to determine title.

Section 5. Record Research. In performing a boundary survey, a professional land surveyor shall conduct research to obtain and evaluate the following:

(1) The present and relevant historical record descriptions of:

(a) Each parcel to be surveyed; and

(b) Each adjoining parcel;

(2)The description of the physical monument that represents each property corner;

(3) All other relevant documents of record including deeds and prior plats and surveys;

(4) All other relevant public agency records including tax maps, GIS maps, and topographic maps; and

(5) Any other available data or documents pertinent to the boundary survey.

Section 6. Field Work. A professional land surveyor shall thoroughly:

(1) Search for the physical monuments that represent each boundary corner;

(2) Search for other physical monuments set out in the description of the parcel or tract of land being surveyed;

(3) Gather, analyze, and document evidence of occupation and physical evidence;

(4) Gather, analyze, and document relevant parol evidence; and

(5) Compare evidence discovered by field work, with that discovered by record research, to determine or reestablish the boundary of the tract or parcel of land being surveyed.

Section 7. Measurement Specifications. (1) Every measurement made as a part of a boundary survey shall comply with the following:

(a) The standards for accuracy and precision established by the provisions of this section; or

(b) Standards for accuracy and precision that exceed the standards established by the provisions of this section but are:

1. Requested by the client;

2. Required by contract;

3. Required by the agency or entity to which the plat of survey is to be presented; or

4. Deemed desirable or necessary by the land surveyor.

(2) A professional land surveyor shall conduct measurements with instruments and equipment that are properly:

(a) Adjusted;

(b) Maintained; and

(c) Calibrated to meet the appropriate tolerance required for the classification of survey as specified in subsection (5) of this section.

(3) A boundary survey shall be conducted utilizing a method of measurement that achieves the appropriate minimum tolerance specified in subsection (5) of this section.

(4) A boundary survey for platting or describing a parcel or tract of land shall be classified as "Urban" or "Rural".

(a) An Urban survey shall:

1. Consist of urban or suburban land; and

2. Include a parcel or tract of land lying within, or adjacent to:

a. A city or town limit;

b. A commercial business area;

c. An industrial area; or

d. A residential area that is outside a city or town limit and contains subdivided lots smaller than five (5.0) acres.

(b) A Rural survey shall apply to all land not classified as "Urban".

(5) Table of Specifications by Class: Classification of Surveys.

	Urban	Rural	Remarks
Unadjusted Closure (Minimum)	1:10,000	1:5,000	Loop or Between Control Monuments
Angular Closure (Maximum)	15" N	30" N	N = Number of Angles in Traverse
Accuracy of Distances	+/-0.05'+100 PPM	+/-0.10'+200 PPM	100PPM=1:10,000
Relative Positional Accuracy	+/-0.05'+100 PPM	+/-0.10'+200 PPM	

Section 8. Global Positioning Systems. (1) It shall be acceptable practice to incorporate the use of survey grade GPS equipment into any boundary survey. The accuracy and precision of all measurements made with **that equipment shall [**~~such equipment must~~**]**, at a minimum, meet all other accuracy and precision standards required otherwise by law or rules under **[**~~subsection 5 of~~**]** Section 7**(5) of this administrative regulation. If[**~~herein. When~~**]** using GPS equipment in the course of a boundary survey, the professional land surveyor shall state on the face of the plat of survey, the following:

(a) A note stating what portion (or all) of the boundary survey was performed using GPS equipment**;[.]**

(b) The type of GPS equipment used, including manufacturer and model number, and whether single or dual frequency receivers were used**;[.]**

(c) The type of GPS survey that was performed, **including[**~~such as~~**]** static, real time kinematic ("RTK"), network adjusted real time kinematic, etc.**;[**~~, and~~**]**

(d) A note that discloses the precision of the GPS work done, either in relative positional accuracy, or vector closure.

(e) A statement identifying the horizontal datum, the vertical datum, and the Geoid model used**; and[.]**

(2) The professional land surveyor shall at a minimum retain adequate documentation, in either paper or electronic format, of raw field data, adjustment calculations and closure, or relative positional accuracy calculations or computations necessary to support the accuracy and precision of the work product.

Section 9. Monumentation. (1) Monumentation standards established in this section shall apply to all boundary surveys:

(2) Unless an adequate monument already exists at each boundary **[**~~parcel~~**]** corner, a professional land surveyor shall set a monument or a reference monument at each corner of the boundary as provided in this section.

(3) A monument or reference monument set by a professional land surveyor shall conform to the following categories and shall meet the following criteria:

(a) "Typical and Preferred" an iron rod, iron pipe, or iron pin that is:

1. Not less than one-half (1/2) inch in diameter and eighteen (18) inches in length; **[**~~and~~**]**

2. Equivalent to, or greater than, schedule-forty (40) weight if pipe is utilized; and

3. Identified with a cap bearing the license number of the professional land surveyor under whose direct supervision the survey was performed, and which cap does not display any other license number.

(b) "Non-typical" to be used only when it is not practical to set the monuments described in subsection (a) of this subsection, and that:

1. Preferably contains a ferrous material or is otherwise capable of being located with a magnetic locator, and may include P. K. or mag nails at least one 1 1/2 and one-half inches in length; and

2. Is identified with the license number of the professional land surveyor under whose direct supervision the survey was performed, and does not display any other license number.

(c) "Alternate" to be used only when it is not practical to set the monuments described in subsections (a) and (b) of this subsection and may include railroad spikes, mine spikes, cross-cuts, chisel cuts, drill holes and curb notches, and **shall[**~~must~~**]** be referenced to a durable, physical feature.

(4) A boundary corner shall be identified by a reference monument if it is impractical to set a monument at the corner for either of the following reasons:

(a) The corner is likely to be disturbed; or

(b) The corner is inaccessible.

(5) A reference monument shall be set on the boundary line, if practicable, to perpetuate the location of each corner.

(6) A professional land surveyor shall set each monument in a manner to avoid or minimize the likelihood of its destruction.

(7) A professional land surveyor may use a tree as a monument under the following conditions:

(a) A tree may be established as a corner monument only on a Rural boundary survey. Each tree utilized as a monument shall be marked in a conspicuous manner that is both physical and permanent and will not otherwise be harmful to the tree.

(b) A tree that a professional land surveyor establishes as a corner monument shall meet the following criteria:

1. Be at least ten (10) inches in diameter at breast height;

2. Be in sound condition;

3. Be marked in a conspicuous manner that is both physical and permanent; and

4. Be clearly described by size, species, and method of marking, on the plat and in the written description.

(c) Trees shall not constitute more than fifty (50) percent of the established monuments for a rural boundary survey.

(d) For an urban retracement survey in which a tree is found to be the monument of record, the tree shall be reference-monumented.

(8) A corner monument that a professional land surveyor has determined is not of sound condition, fails to meet the standards established in this administrative regulation, or is inadequate under the definition of monument within this administrative regulation, shall be reference-monumented to perpetuate the corner location. All existing record monuments discovered during the performance of the survey shall be preserved and shall not be altered or destroyed.

(9)**(a)** Linear monuments may consist of a watercourse, ridge, road, or cliff, and:

(b)1.[~~(a)~~**]** The point at which a boundary line intersects a linear monument shall be monumented or reference monumented; and

2.[~~(b)~~**]** A physical feature that represents a linear monument

shall be monumented or reference monumented at a minimum of every 1,000 feet, and those monuments shall be set in intra-visible pairs not to exceed 1,000 feet in spacing between pairs.

(10) All monumentation shall be set prior to the time the plat of survey, or record plat is issued by the surveyor. The signing and sealing of a survey plat is certification by the professional land surveyor that all corners shown on the plat are set on the ground.

Section 10. Documentation of Boundary Surveys. (1) A plat of survey shall be required to be given to the client when the professional land surveyor does any of the following:

(a) Surveys a new boundary line; **[**~~or~~**]**

(b) Retraces the boundary lines of a previously established boundary; or

(c) Determines that the current physical description or plat does not accurately depict the actual conditions found during the course of performing the survey.

(2) A professional land surveyor shall retain as permanent records the original plat of survey prepared by the land surveyor, or a copy thereof, and a copy of any new physical description that was prepared from the survey.

(3) A professional land surveyor shall retain as permanent records the following items used to perform a boundary survey:

(a) Research documents including notations stating the source of each;

(b) Field and office notes;

(c) Electronic and magnetically stored field data;

(d) Documents of calculation stating the:

1. Relative positional accuracy or closure as required by Section 7 of this administrative regulation;

2. Adjustment method;

3. Bearing reference datum; **and**

4. Determination of corners;

(e) Plat of survey and written description, if any, of the surveyed parcel or tract of land; **[**~~and~~**]**

(f) All other pertinent information necessary to reproduce the boundary survey; and

(g) All other pertinent information supporting the location of the boundary lines and corners of the boundary survey.

(4) Written description. A written description prepared by a professional land surveyor shall be complete, shall accurately describe the actual boundary survey**[**~~,~~**]** and **[**~~at a minimum~~**]**, contain the following information:

(a) The general location of the land that was surveyed;

(b) The specific location of the land in reference to a major physical feature or recognized control network;

(c) The reference of at least one (1) boundary corner to a corner of the parent tract;

(d) The direction and length of each line, as follows:

1. Each bearing represented in degrees, minutes and seconds with each distance represented to the hundredths of a foot; **[**~~and~~**]**

2. Any geometrically-curved line identified with a beginning point, terminus point, and sufficient curve data to define the curve; and

3. A description of each prominent terrain feature, if any, that the boundary follows**[**~~:~~**]**

(e) A notation as to whether each monument was found or set**[**~~.~~**]**

(f) The identification of each tree utilized as a new corner monument, including breast height diameter, species of tree, method of marking, and a notation whether the tree is a record monument or a newly established monument**[**~~.~~**]**

(g) A complete description of each "set" monument, to include, if appropriate, the monument's length, diameter, type of material and the identifying cap or other identifier that was used**[**~~.~~**]**

(h) A complete description of each "found" monument that complies with the following:

1. It is sufficiently accurate and adequate for subsequent identification by another professional land surveyor; and

2. To the extent possible, the description shall include the monument's dimensions, type of material and the identification cap or other identifier that was used**[**~~.~~**]**

(i) A description of the location of any cemetery or grave site that is observable or evident during the performance of the field work, or discovered from the required research**[**~~.~~**]**

(j) The record source of the land surveyed and the names and record sources of all adjoining property owners;

(k) The calculated area of the land surveyed stated to the nearest hundredth of an acre**[**~~.~~**]**

(l) Name, certification date of the written description, license number and seal of the professional land surveyor under whose direct supervision the survey was performed, and name of the land surveying firm, if any; and

(m) Completion date of the boundary survey.

(5) Plat of survey. A plat of survey shall be drawn to scale on durable, dimensionally-stable media, and clearly contain the following information:

(a) Direction and length of each line as follows:

1. Each bearing represented in degrees, minutes, and seconds with each distance represented to the hundredths of a foot; **[**~~and~~**]**

2. Any geometrically-curved line identified with a beginning point, terminus point, and sufficient curve data to define the curve; and

3. A depiction of each prominent terrain feature, if any, that the boundary follows:

(b) The calculated area of the land surveyed, stated to the nearest hundredths of an acre;

(c) A notation as to whether each monument was found or set;

(d) A complete description of each set monument that marks or references a boundary corner to include, if appropriate, the monument's length, diameter, type of material and the identifying cap or identifier that was used;

(e) A complete description of each found monument that complies with the following:

1. It is sufficiently accurate and adequate for subsequent identification by another professional land surveyor; and

2. To the extent possible, the description shall include the monument's dimensions, type of material and the identifying cap or identifier, or lack thereof;

(f) Reference of at least one (1) corner to at least one (1) of the following:

1. A corner of the parent tract;

2. A durable and recognizable physical object; or

3. A properly identified primary control network;

(g) The name of each road, along with any record source thereof;

(h) The name and record sources of each adjoiner;

(i) The name and record sources of each adjoining subdivision;

(j) Any apparent encroachment discovered in the course of the survey;

(k) The reference meridian and whether its basis is:

1. True;

2. Grid;

3. Record, including the source of the record meridian;

4. State plane; or

5. Magnetic, including the date and location of the **observation**;

(l) A vicinity map of sufficient detail to locate the parcel or tract of land being surveyed, unless the location of the parcel or tract of land is clearly shown by the plat itself;

(m) A statement, as appropriate, of:

1. The unadjusted error of closure for the traverse; and

2. The relative positional accuracy for a GPS based survey;

(n) A statement identifying the classification of the survey as rural or urban;

(o) A statement as to whether the directions and distances shown on the plat are based on an adjusted traverse;

(p) The location of a cemetery or grave site that is observable or evident during the performance of the field work or discovered from the required research;

(q) A dated signature and the seal of the professional land surveyor under whose direct supervision the boundary survey was performed;

(r) A written and graphic scale; and

(s) A title block containing the following:

1. Name and address of the client;

2. Name and address of the property owner of record;

3. Title of the survey;

4. Statement that the plat of survey represents a boundary survey and complies with 201 KAR 18:150; and

5. Name and business address of the professional land surveyor who performed the survey and, if applicable, the name and address of the surveying firm; **and**

(t) The following information shall be placed conspicuously on the face of the plat of survey:

1. The record source of the tract or parcel of land surveyed; and

2. The location or address of each tract or parcel of land surveyed.

Section 11. Identification of Drawings and Plats. (1) A plat of survey shall be signed, sealed, and dated by the professional land surveyor under whose direct supervision the survey was performed.

(2) Working drawings or unfinished plats of not yet completed boundary surveys shall be prominently marked or stamped in at least sixteen (16) point type or its equivalent, as follows: Preliminary - Not For Recording or Land Transfer.

Section 12. Partial Boundary Surveys. (1) In performing a boundary survey, a professional land surveyor **shall not be [**~~is not~~**]** required to survey the parent tract in its entirety in order to create a smaller tract for conveyance **if[**~~when~~**]** the following conditions are met:

(a) Adequate evidence exists that conforms to the deeds of record; **[**~~and~~**]**

(b) Sufficient monumentation exists that is verifiable to establish the lines common to the boundary of the parent tract; and

(c) There is sufficient evidence and monumentation to establish the lines common to the adjoining tracts without adversely affecting the property interests of any adjoining owners.

(2) In performing a boundary survey, a professional land surveyor is not required to survey the entire boundary of a tract of land in order to mark a boundary line or replace a boundary corner when the following conditions are met:

(a) Sufficient evidence is found and verified to establish the record location of that portion of the boundary being surveyed; and

(b) The marked boundary line or reestablished boundary corner does not adversely affect the property interests of any adjoining owners.

(3) A plat of survey for that part of the boundary surveyed pursuant to this section of this administrative regulation, shall be required to comply with this administrative regulation for the part of the boundary that was surveyed, and **shall [**~~must~~**]** graphically delineate and designate that portion of the boundary covered by the survey.

Section 13. Plats, Drawings, and Graphic Representations of Non-Boundary Survey Work Mandatory Disclosures. (1) Plats, drawings, and graphic representations created by a professional land surveyor, not representing either a plat of survey, or a preliminary plat, drawing, or graphic representation of a boundary survey, shall meet the following criteria:

(a) Be clearly marked as to their intended use; and

(b) State affirmatively in a title block in at least twelve (12) point type or its equivalent, that the work does not represent a boundary survey and is not intended for land transfer; and

(c) May be signed and sealed by the professional land surveyor under whose direct supervision the work represented by the plat, drawing, or graphic representation was performed or the document was prepared.

(2) A professional land surveyor shall state in a note or notes, on the face of any plat, drawing or graphical representation of any work product falling within the definition of land surveying but not constituting either a plat of survey, or a preliminary plat, drawing or graphic representation of a boundary survey, the following mandatory informational disclosures for the work product:

(a) For whom and by whom the work product was created;

(b) The purpose of the work product;

(c) The method employed to create the work product and its underlying values and specifications;

(d) The location of the parcel or tract of land with which the work product is concerned;

(e) The **date or dates [**~~date(s)~~**]** that the work was performed;

(f) The date of any certification of the work product by the licensee;

(g) The mathematical scale employed in any graphic representation of the work performed; and

(h) The degree of accuracy or level of quality of the work product expressed in terms of mathematical precision.[~~Section 1. Definitions. (1) "Boundary survey" means a survey for which the primary purpose includes the:~~

~~(a) Determining of the perimeter of a parcel or tract of land;~~

~~(b) Establishing or reestablishing of a parcel corner or monument;~~

~~(c) Describing, platting, and locating each fixed improvement on the parcel surveyed; or~~

~~(d) Dividing or consolidating the parcels surveyed.~~

~~(2) "Plat of survey" means a drawing of a parcel or tract of real property used to depict the final results of a field survey.~~

~~(3) "Corner" means a point on a land boundary that designates a change in direction.~~

~~(4) "Monument" means an artificial manmade or natural object that is used as, or presumed to occupy, a:~~

~~(a) Real property corner;~~

~~(b) Point on a boundary line; or~~

~~(c) Reference point.~~

~~(5) "Witness monument" means a monument:~~

~~(a) That does not occupy the same defined position as a corner; and~~

~~(b) Whose relationship to the corner is established.~~

~~(6) "Meander point" means a survey point or station marking a change in direction along a linear feature such as a watercourse, ridge, road, or cliff.~~

~~(7) "Reference point" means the defined position of a point that is, or can be, established in relation to the position of another defined point or points.~~

~~Section 2. The standards of practice established in this administrative regulation:~~

~~(1) Shall be the minimum standards of practice for a professional land surveyor; and~~

~~(2) Shall not limit the establishment of more stringent standards of practice for a professional land surveyor by:~~

~~(a) An agency;~~

~~(b) An owner;~~

~~(c) Contract; or~~

~~(d) The professional land surveyor.~~

~~Section 3. (1)(a) Boundary surveying in Kentucky, and a document purporting to represent a boundary survey, shall comply with the provisions of this administrative regulation.~~

~~(b) Failure to comply with this administrative regulation shall constitute misconduct, gross negligence, incompetence, or a combination of these violations in the practice of professional land surveying.~~

~~(2) A professional land surveyor shall not represent that:~~

~~(a) A boundary survey determines land ownership;~~

~~(b) A boundary survey provides more than evidence of rights in land; or~~

~~(c) Land ownership can be established by a means other than an action in a Kentucky court.~~

~~Section 4. The marks on the ground of a professional land surveyor shall constitute the actual boundary survey.~~

~~Section 5. Record Research. (1) To determine the proper description of the land to be surveyed, a professional land surveyor shall conduct research to obtain record description of:~~

~~(a) Each parcel to be surveyed; and~~

~~(b) Each adjoining parcel.~~

~~(2) A professional land surveyor shall evaluate:~~

~~(a) Historical records of the subject and each adjoining parcel;~~

~~(b) Records of:~~

~~1. Previous pertinent surveys;~~

~~2. Tax maps;~~

3. Topographic maps;
4. Aerial photographs; and
5. Public agency records; and
(c) Other available data pertinent to the boundary survey.
(3) A professional land surveyor shall analyze the data and make a determination of the record boundary of each parcel to be surveyed.
(4) Research required by the provisions of this administrative regulation:
(a) Shall be used by a professional land surveyor to determine the location of the parcel boundary; and
(b) Shall not be used by a professional land surveyor to determine title.

Section 6. Field Research. A professional land surveyor shall thoroughly:
(1) Search for the physical monument that represents each parcel corner;
(2) Analyze evidence of occupation;
(3) Investigate possible parole evidence supporting the position of monuments or corners;
(4) Compare evidence discovered by the field survey with the record research to establish the boundary of the land being surveyed.

Section 7. Measurement Specifications. (1) Every measurement made as a part of a boundary survey shall comply with:
(a) The standards for accuracy and precision established by the provisions of this section; or
(b) At the request of the client, standards for accuracy and precision that exceed the standards established by the provisions of this section.
(2) A professional land surveyor shall conduct measurements with instruments and equipment that are properly:
(a) Adjusted;
(b) Maintained; and
(c) Calibrated to meet the appropriate tolerance required for the classification of survey as specified in subsection (6) of this section.
(3) A boundary survey shall be conducted utilizing a method of closed traverse and the measurement of angles and distances that achieve the appropriate tolerance specified in subsection (6) of this section.
(4) A boundary survey for platting or describing a land parcel shall be classified as Class A or Class B.
(a) Class A shall:
1. Consist of urban or suburban land; and
2. Include a parcel lying within, or adjacent to:
a. A city or town limit;
b. A commercial business area;
c. An industrial area;
d. A residential area; or
e. A developing area.
(b) Class B shall:
1. Consist of rural land; and
2. Include:
a. A farm;
b. A woodland; or
c. Other land not included in Class A.
(5) The accuracy and precision of a boundary survey shall not be less than the appropriate requirements established in subsection (6) of this section.
(6) Table of Specifications by Class: Classification of Surveys.

	Class A Urban & Suburban	Class B Rural	Remarks
Unadjusted Closure (Minimum)	1:10,000	1:5,000	Loop or Between Control Monuments
Angular Closure (Maximum)	15" N	30" N	N = Number of Angles in Traverse
Accuracy of Distances	0.05' +100 PPM	0.10' +200 PPM	100 PPM = 1:10,000

Section 8. Monumentation. (1) In a boundary survey, a professional land surveyor shall make a determination of the boundary and corners of the parcel being surveyed.
(2) Unless an adequate monument already exists at each parcel corner, a professional land surveyor shall set a monument or a witness monument at each corner of a parcel as provided in this section.
(3) A monument or witness monument set by a professional land surveyor shall be:
(a) Made of, or contain, a ferrous material;
(b) Not less than one-half (1/2) inch in diameter and eighteen (18) inches in length;
(c) A minimum of schedule forty (40) weight if pipe is utilized; and
(d) Identified with a cap bearing the registration number of the professional land surveyor responsible for and in charge of the survey.
(4) A monument or witness monument shall be required at each corner of a boundary survey.
(5) A parcel corner shall be identified by a witness monument if a monument cannot be set because the corner:
(a) Falls upon rock, concrete, or other like material;
(b) Is likely to be disturbed; or
(c) Is inaccessible.
(6) A witness monument shall be set:
(a) On the boundary line, if practicable; and
(b) As close as practicable to the corner location.
(7) A professional land surveyor shall set each monument in a manner to avoid its destruction.
(8)(a) A tree shall not be established as a corner monument except on a rural boundary survey.
(b) A tree that a professional land surveyor establishes as a corner monument shall be:
1. At least ten (10) inches in diameter at breast height;
2. In sound condition;
3. Marked in a conspicuous manner; and
4. Clearly described by size, species, and method of marking on the plat, and in the written description.
(c) Trees shall not constitute more than fifty (50) percent of the established monuments for a boundary survey in a rural land classification.
(d) For an urban or suburban survey in which a tree is found to be the monument of record, the tree shall be witness-monumented.
(9) A corner monument that a professional land surveyor has determined is not of sound condition or which fails to meet the standards established in this administrative regulation shall be witness-monumented to perpetuate the corner location.
(10) Linear monuments.
(a) The following distinct physical features may be utilized as a monument:
1. A watercourse;
2. A ridge;
3. A road; or
4. A cliff.
(b) The point at which a boundary line intersects a physical feature shall be monumented or witness-monumented.
(c) A physical feature that represents a linear monument shall be witness-monumented at a minimum of every 1,000 feet.
(d) A professional land surveyor shall obtain sufficient field survey data to define the position of each physical monument in order to accurately plat, describe, and calculate the area of the land being surveyed.

Section 9. Documentation. (1) The corner monuments established or reestablished by a professional land surveyor shall constitute the actual boundary survey.
(2) A professional land surveyor shall provide a plat of survey to the client upon the completion of a boundary survey in which he has:
(a) Retraced a previously established boundary line; or
(b) Established a new boundary line.
(3) A professional land surveyor shall retain as permanent record the following items pertaining to a boundary survey:
(a) Plats;

(b) Written descriptions;
(c) Research documents;
(d) Field and office notes;
(e) Electronic and magnetically stored field data; and
(f) Documents of calculations stating the:
1. Closure;
2. Adjustment method;
3. Bearing reference datum; and
4. Determination of corners.

(4) A written description prepared by a professional land surveyor for the purpose of defining a parcel boundary shall:
(a) Be complete;
(b) Accurately describe the actual boundary survey; and
(c) Contain the information specified in this paragraph:
1. Captions sufficient to identify the:
a. General location of the land surveyed;
b. Specific location of the land in reference to a major physical feature, or primary control network; and
c. Reference of at least one (1) corner to a corner of the parent tract;
2. The direction and length of each line, as follows:
a.(i) Each bearing shall be shown in degrees, minutes, seconds; and
(ii) Each distance shall be shown to hundredths of a foot; or
b. A geometrically-curved line shall be identified with a beginning point, terminus point, and sufficient curve data to define the curve;
3. A description of each monument marking or witnessing a corner, including:
a. A notation as to whether found or set;
b. Dimensions;
c. Type of material; and
d. Identification cap;
4. The names and record sources of adjoining property owners;
5. A notation describing each prominent feature of terrain which the boundary follows;
6. Calculated area of the land surveyed, computed either to the nearest hundredth of an acre or square foot;
7. Reference to the record source of the land surveyed;
8. Name and registration number of the professional land surveyor who performed the survey, and name of the land surveying firm, if any;
9. A dated signature and the seal of the professional land surveyor responsible for and in charge of the survey; and
10. Date of the field survey.

(5) A final plat of a boundary survey shall be drawn to scale on durable, dimensionally-stable media, and clearly contain the following information:
(a) Direction and length of each line as follows:
1.a. Each bearing shown in degrees, minutes and seconds; and
b. Each distance shown to hundredths of a foot; or
2. A geometrically-curved line shall be identified with a beginning point, terminus point, and sufficient curve data to define the curve;
(b) Calculated area of the land surveyed computed either to the nearest hundredth of an acre or nearest square foot;
(c) A description of each monument, which marks or witnesses a corner, including:
1. A notation as to whether found or set;
2. Dimensions;
3. Type of material; and
4. Identification cap;
(d) Reference of at least one (1) corner to a:
1. Corner of the parent tract;
2. Durable physical object; or
3. Primary control network, such as state plane coordinates;
(e)1. The name of each road;
2. The name and record sources of each adjoiner; and
3. The name and record sources of each adjoining subdivision;
(f) An apparent encroachment discovered in the course of the survey;
(g) The reference meridian and whether its basis is:
1. True;
2. Grid;
3. Record, including the source of the record meridian;
4. State plane; or
5. Magnetic, including the date of the observation;
(h) Vicinity map of sufficient detail to locate the land being surveyed, unless the location of the property is clearly shown by the plat itself;
(i) A statement disclosing the unadjusted error of closure;
(j) A statement identifying the land classification of the parcel surveyed;
(k) A statement as to whether the directions and distances shown on the plat is based on an adjusted traverse;
(l) The location of a cemetery or grave site that is visible or discernible during the field survey or the required research;
(m) A dated signature and the seal of the professional land surveyor responsible for and in charge of the survey;
(n) A written and graphic scale; and
(o) A title block containing the following:
1. Name and address of client and parcel owner;
2. Title of the survey;
3. Location of each parcel surveyed; and
4. Name and address of the professional land surveyor and, if applicable, the firm that performed the survey.

Section 10. Marking of Working Drawings And Unfinished Plats. (1) A working drawing or unfinished plat:
(a) Shall be marked as to its intended use; and
(b) Shall not be sealed.
(2) A marking shall be made in a manner similar to:
(a) "PRELIMINARY - NOT FOR RECORDING OR LAND TRANSFER"; or
(b) "EXHIBIT".

Section 11. Partial Boundary Survey. (1) A partial boundary survey may be conducted by a professional land surveyor if:
(a) The portion of the property being surveyed can be clearly isolated from the remainder of the property; and
(b) The interest of an adjoining owner is not affected.
(2) A plat of a partial survey shall:
(a) Comply with this administrative regulation; and
(b) Graphically delineate that portion of the boundary covered by the current survey from the remainder of the property.]

B. DAVID COX, Executive Director
APPROVED BY AGENCY: August 9, 2010
FILED WITH LRC: August 10, 2010 at noon
CONTACT PERSON: Jonathan Buckley, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, October 12, 2010)

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

RELATES TO: KRS 327.040, 327.070
STATUTORY AUTHORITY: KRS 327.040(11), (12), (13)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040 (12) and (13) authorize the Board of Physical Therapy to establish by administrative regulation a code of ethical standards and standards of practice for physical therapists and physical therapist assistants. This administrative regulation establishes those standards which, if violated, are a basis for disciplinary action under KRS 327.070.

Section 1. Code of Ethical Standards. (1) Physical therapists and physical therapist assistants shall:
(a) Respect the rights and dignity of all patients;

(b) Practice within the scope of the credential holder's training, expertise and experience;

(c) Report to the board any reasonably suspected violation of KRS Chapter 327 or 201 KAR Chapter 22 by another credential holder or applicant within thirty (30) days; and

(d) Report to the board any civil judgment, settlement, or civil claim involving the credential holder's practice of physical therapy made against the credential holder relating to the credential holder's own physical therapy practice within thirty (30) days.

(2) Physical therapists and physical therapist assistants shall not:

(a) Verbally or physically abuse a client; or

(b) Continue physical therapy services beyond the point of reasonable benefit to the patient, unless the patient consents in writing.

Section 2. Standards of Practice for the Physical Therapist. While engaged in the practice of physical therapy, a physical therapist shall:

(1) Perform screenings in order to:

(a) Provide information on a person's health status relating to physical therapy;

(b) Determine the need for physical therapy evaluation and treatment;

(c) Make a recommendation regarding a person's ability to return to work or physical activity; and

(d) Provide physical therapy services;

(2) Evaluate each patient:

(a) Prior to initiation of treatment;

(b) Upon receipt of a patient from another physical therapy service, facility, or agency; and

(c) If requested by a referring professional;

(3) Reassess each patient in accordance with the following:

(a) Reassessing inpatients in either a hospital or comprehensive rehabilitation facility every fourteen (14) days;

(b) Reassessing every ninety (90) days, with the physical therapist assistant present, patients in:

1. A facility defined in 902 KAR 20:086 as an intermediate care facility (ICF) for the mentally retarded (MR) and developmentally disabled (DD); or

2. A school system.

a. A forty-five (45) day grace period shall be allowed upon transfer from another school district or from the start of the school year.

b. During this grace period treatment may continue based upon the previous reassessment or initial evaluation;

(c) Reassessing each patient not otherwise noted every thirty (30) days following the initial evaluation or subsequent reassessment;

(d) Reassessing a patient whose medical condition has changed;

(4) Refer the patient to other professionals or services if the treatment or service is beyond the physical therapist's scope of practice;

(5) Be responsible for the physical therapy record of each patient;

(6) Provide services that meet or exceed the generally accepted practice of the profession;

(7) Explain the plan of care to the patient, to others designated by the patient, and to appropriate professionals;

(8) Make it clear to the patient that the patient has the right to choose any qualified professional or equipment supplier if the physical therapist makes recommendations for those;

(9) Disclose in writing to each patient any financial interest, compensation, or other value to be received by the referral source:

(a) For services provided by the physical therapist;

(b) For equipment rental or purchase; or

(c) For other services the physical therapist may recommend for the patient.

(10) Unless prohibited by law, as members of a business entity be allowed to pool or apportion fees received in accordance with a business agreement.

Section 3. Standards of Practice for the Physical Therapist Assistant. While engaged in the practice of physical therapy, the physical therapist assistant shall:

(1) Provide services only under the supervision and direction of a physical therapist;

(2) Refuse to carry out procedures that the assistant believes are not in the best interest of the patient or that the assistant is not competent to provide by training or skill level;

(3) Initiate treatment only after evaluation by the physical therapist;

(4) Upon direction from the physical therapist, gather data relating to the patient's disability, but not determine the significance of the data as it pertains to the development of the plan of care;

(5) Refer to the physical therapist inquiries that require an interpretation of patient information related to rehabilitation potential;

(6) Comply with the plan of supervision established by the physical therapist;

(7) Communicate with the physical therapist any change or lack of change that occurs in the patient's condition that may indicate the need for reassessment; and

(8) Discontinue physical therapy services if reassessments are not done in compliance with Section 2(3) of this administrative regulation, and communicate to the appropriate parties.

Section 4. Standards for Supervision. While supervising the physical therapist assistant and supportive personnel, the physical therapist shall:

(1)(a) At all times, including all work locations <u>in all jurisdictions</u>, be limited to:

1. Supervising not more than four (4) full-time physical therapist assistants or supportive personnel; or

2. The number of those persons providing part-time patient care for a period equivalent to that provided by four (4) full-time providers of patient care.

(b) Temporary failure to abide by the maximum staffing ratio of physical therapists to physical therapist assistants or supportive personnel required in this section for a period not to exceed seven (7) consecutive work days shall not constitute a violation of this standard;

(2) Not delegate procedures or techniques to the physical therapist assistant or supportive personnel if it is outside his or her scope of training, education or expertise.

(3) Be responsible for:

(a) Interpreting any referral;

(b) Conducting the initial physical therapy evaluation;

(c) Establishing reporting procedures to be followed by the physical therapist assistant and supportive personnel;

(d) Evaluating the competency of the physical therapist assistant and supportive personnel;

(e) Supervising the physical therapist assistant by being available and accessible by telecommunications during the working hours of the physical therapist assistant;

(f) Insuring that if supportive personnel provide direct patient care that there is on site supervision by a physical therapist or physical therapist assistant;

(g) Insuring that a physical therapy student fulfilling clinical education requirements shall receive on-site supervision by a physical therapist;

(h) Insuring that a physical therapist assistant and student fulfilling clinical education requirements shall receive on-site supervision of which eighty (80) percent may be by a credentialed physical therapist assistant;

(i) Establishing discharge planning for patients who require continued physical therapy.

Section 5. Standards for Documentation. The physical therapist shall be responsible for the physical therapy record of a patient. The physical therapy record shall consist of:

(1) The initial evaluation, a written or typed report signed and dated by the physical therapist performing the evaluation that shall include:

(a) Pertinent medical and social history;

(b) Subjective information;

(c) Appropriate objective testing;

(d) Assessment, which may include problems, interpretation,

and a physical therapy diagnosis identifying the nature and extent of the patient's impairment; and

(e) Plan of care, including:

1. Treatment to be rendered;
2. Frequency and duration of treatment; and
3. Measurable goals;

(2) Progress notes, which shall be written or typed, signed, and dated by the person rendering treatment, and countersigned and dated by the physical therapist if written by supportive personnel, physical therapist students, physical therapist assistant students, or examination candidates. The progress notes shall include:

(a) A current record of treatment;

(b) Patient's adverse response to treatment;

(c) Any factors affecting treatment; and

(d) Data obtained by all objective tests performed;

(3) Reassessment, which shall be written or typed, signed, and dated by a physical therapist. This reassessment shall be in compliance with **Section 2(3)[**~~4(3)(i) through (l)~~**]** of this administrative regulation:

(a) If the physical therapist is treating the patient, these reports may be incorporated into the progress notes.

(b) If a physical therapist assistant or supportive personnel are treating the patient, the report shall be a separate entry into the record.

(c) A reassessment shall include directly observed objective, subjective, and medical information completed by the physical therapist that is necessary for the revision or reaffirmation of the plan of care and measurable goals;

(4) Discharge summary, which shall be a written or typed, signed, and dated statement.

(a) A physical therapist assistant may write the discharge summary, which shall be countersigned by the responsible physical therapist.

(b) The discharge summary shall include:

1. The date of discharge;
2. The reason for discharge;
3. The physical therapy status upon discharge; and
4. A discharge plan, which shall include recommendations the physical therapist has regarding the need for continuing physical therapy.
5. A discharge summary shall be written within thirty (30) days of the termination of the current plan of care if a subsequent plan of care has not been established; and

(5) The correct designation following the signature of the person who has entered a statement into the patient record shall be as follows:

(a) If written by a physical therapist: "PT". Appropriate designations for advanced physical therapy degrees may follow "PT";

(b) If written by a physical therapist's assistant: "PTA";

(c) If written by supportive personnel: "PT Aide", or "Physical Therapy Aide", or "PT Tech"; and

(d) If written by a student: "Physical Therapist Student" or "PT Student"; "Physical Therapist Assistant Student" or "PTA Student".

REBECCA KLUSCH, Executive Director

APPROVED BY AGENCY: July 22, 2010

FILED WITH LRC: August 12, 2010 at 10 a.m.

CONTACT PERSON: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142.

PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board for Proprietary Education
(As Amended at ARRS, October 12, 2010)

201 KAR 40:050. Application for license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.450, 165A.465, 165A.470, 165A.475, 165A.480(1)

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.460-165A.515 [~~165A.510~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.460-165A.515 requires[~~mandates~~] that the State Board for Proprietary Education establish an application procedure for commercial driver license training schools. This administrative regulation establishes the application procedures for commercial driver license training schools.

Section 1. Application for Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school residing in Kentucky, the school owner [~~owner(s)~~] shall:

(a) Complete and submit to the board Form PE 30, [~~a completed original and one (1) copy of the~~] Application for Resident [~~to Operate a~~] Commercial Driver License Training School, with supporting documentation as listed on the form[~~, incorporated by reference~~];

(b) Pay the nonrefundable application fee of $200 established in KRS 165A.475(2);

(c) Pay the nonrefundable initial licensure fee of $100 [~~$300~~];

(d) Pay the nonrefundable contribution to the Student Protection Fund of $300; and

(e) Meet the requirements of Section 3[~~Sections 3 through 5~~] of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 2. Application for Non-Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky, the school's owner [~~or owners~~] shall:

(a) Complete and submit to the board Form PE 31, [~~a completed original and one (1) copy of the~~] Application for Non-Resident [~~to Operate a Non-Kentucky Resident~~] Commercial Driver License Training School with supporting documentation as listed on the form;

(b) Pay the nonrefundable application fee of $200 established in KRS 165A.475(2);

(c) Pay the nonrefundable initial licensure fee of $700 [~~$900~~];

(d) Pay the nonrefundable contribution to the Student Protection Fund of $900;

(e) Meet the requirements of Section 3 [~~Sections 3 and 4~~] of this administrative regulation.

(2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 3. [~~State and National Criminal History Background Checks. (1) Any person, firm, partnership, association, educational institution, establishment, agency, organization, officers of a corporation, school director, commercial driver license instructor or agent that offers commercial driver license driver training shall undergo a state and national criminal history background check at the time of application to operate a school, and submit to being fingerprinted by the Kentucky State Police, on the fingerprint card supplied by the board with the Application to Operate a Kentucky Resident Commercial Driver License Training School or the Application to Operate a Non-Kentucky Resident Commercial Driver License Training School;~~

~~(2) Each fingerprint card submitted to the board shall be accompanied by a nonrefundable fee of thirty-four (34) dollars, payable by certified check or money order to the Kentucky State Treasurer.~~

~~Section 4.~~] Evidence of Liability Insurance Coverage. Each application to operate a commercial driver license training school shall be accompanied by:

(1) Verification[~~Evidence~~] of liability insurance coverage for the commercial driver license training school from a Kentucky-licensed insurance carrier,[~~the instructors, and students while operating driver training school equipment with liability insurance coverage~~] as mandated by KRS 165A.475(1)(d);

(2) Verification of liability insurance coverage from the school's[~~its~~] insurance carrier shall[~~company of the insurance policy to~~] include on the policy[~~a~~] complete listing of all equipment, serial

numbers, vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the board in writing within thirty (30) days of the subsequent change.

Section 4.[~~5. Inspection and Investigation of Commercial Driver License Training School and Equipment. By memorandum of agreement with the board, the Kentucky State Police shall:~~

~~(1) Inspect each Kentucky resident commercial driver license training school facility and equipment which shall be recorded on forms provided by the Kentucky State Police and which forms shall be filed with the board.~~

~~(2) Investigate the commercial driver license training school and verify the contents of its application for licensure on forms provided by the Kentucky State Police and which forms shall be filed with the board.~~

~~Section 6. Denial of Application. (1) The board shall deny an application to operate a commercial driver license training school for:~~

~~(a) Failure to comply with the requirements of KRS 165A.460-165A.515;~~

~~(b) Failure to comply with the administrative regulations governing the application and operation of a commercial driver license training school.~~

~~(c) Failure to comply with KRS 165A.470(1)-(4) regarding persons connected in any capacity with commercial driver license training schools.~~

~~(2) The board may deny an application to operate a commercial driver license training school for lack of good moral character as mandated by KRS 165A.475(1)(b).~~

~~Section 7.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 30 "Application for Resident[~~to Operate a~~] Commercial Driver License Training School", **October [~~(~~]2010[~~)~~]**[~~August 2002~~] edition; and[~~.~~]

(b) Form PE 31 "Application for Non-resident[~~to Operate a Non-Kentucky resident~~] Commercial Driver License Training School", **October [~~(~~]2010[~~)~~]**[~~August 2002~~] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK GABIS, Board Chair

APPROVED BY AGENCY: July 27, 2010

FILED WITH LRC: July 29, 2010 at 2 p.m.

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board for Proprietary Education
(As Amended at ARRS, October 12, 2010)

201 KAR 40:060. Application for renewal of license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.485, 165A.510, 49 C.F.R. 325

STATUTORY AUTHORITY: KRS 165A.340(3)[~~, 165A.510~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.485 requires [~~mandates~~] that the State Board for Proprietary Education establish an application for license renewal of commercial driver license training schools. This administrative regulation establishes the renewal procedures for commercial driver license training schools.

Section 1. Renewal Application for Kentucky [~~Resident~~] Commercial Driver License Training School. (1) On or before May 15 of each year, a licensed Kentucky resident commercial driver license training school shall:

(a) Complete and submit to the board Form PE 32, [~~a completed original and one (1) copy of the~~] Renewal Application to Operate a Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of $200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee of:

1. $300 for licensed commercial driver license training schools for net tuition income up to and including $50,000; and

2. An additional fifteen (15) dollars for each $10,000 in net tuition thereafter, not to exceed a total renewal fee of $2,000; and

(d) Meet the requirements of Section 3 [~~Sections 3 through 5~~] of this administrative regulation.

(2) All fees shall be paid by [~~submitted by certified~~] check or money order payable to the "Kentucky State Treasurer".

Section 2. Renewal Application for Non-Kentucky Resident Commercial Driver License Training School. (1) On or before May 15 of each year, a licensed non-Kentucky resident commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky shall:

(a) Complete and submit to the board Form PE 33, [~~a completed original and one (1) copy of the~~] Renewal Application to Operate a Non-Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of $200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee of $900; and

(d) Meet the requirements of Section 3 [~~Sections 3 and 4~~] of this administrative regulation.

(2) All fees shall be paid by [~~submitted by certified~~] check or money order made payable to the "Kentucky State Treasurer".

Section 3. Evidence of Liability Insurance Coverage. Each renewal application to operate a commercial driver license training school shall be accompanied by**:**

(1) Verification[~~:~~

~~(1) Evidence~~] of liability insurance coverage for the commercial driver license training school from a Kentucky-Licensed insurance carrier, [~~the instructors, and students while operating driver training school equipment with liability insurance coverage~~] as mandated by KRS 165A.475(1)(d) **or**

(2)[~~.~~][~~:~~

~~(2)~~] Verification of liability insurance coverage from the school's [~~its~~] insurance carrier shall [~~company of the insurance policy to~~] include on the policy a complete listing of all equipment, serial numbers, and vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the board in writing within thirty (30) days of the subsequent change.

Section 4. [~~Inspection and Investigation of Commercial Driver License Training School and Equipment. By memorandum of agreement with the board, the Kentucky State Police shall:~~

~~(1) Inspect each Kentucky resident commercial driver license training school including facility and equipment on forms provided by the Kentucky State Police and which forms shall be filed with the board;~~

~~(2) Investigate the commercial driver license training school and verify the contents of its renewal application for licensure on forms provided by the Kentucky State Police and which forms shall be filed with the board.~~

~~Section 5.~~] Denial of Renewal Application. (1) The board shall deny a renewal application to operate a commercial driver license training school for:

(a) Failure to comply with the requirements of KRS 165A.460-165A.515;

(b) Failure to comply with the administrative regulations governing the application and operation of a commercial driver license training school;

(c) Failure to comply with KRS 165A.475(1)(d) regarding per-

sons connected in any capacity with commercial driver license training schools.

(d) Failure to maintain all training vehicles in a safe operating condition, pursuant to 49 C.F.R. 325, as enforced by the Kentucky State Police.

(2) The board may deny a renewal application to operate a commercial driver license training school for lack of good moral character, as determined by KRS 165A.475(7).

Section 5.[6.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 32, "Renewal Application to Operate a Resident Commercial Driver License Training School", **October** 2010 [August 2002] edition; and

(b) Form PE 33, "Renewal Application to Operate a Non-Resident [Non-Kentucky Resident] Commercial Driver License Training School", **October** 2010 [August 2002] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK GABIS, Board Chair

APPROVED BY AGENCY: July 27, 2010

FILED WITH LRC: July 29, 2010 at 2 p.m.

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board for Proprietary Education
(As Amended at ARRS, October 12, 2010)

201 KAR 40:070. Commercial driver license training school instructor and agent application and renewal procedures.

RELATES TO: KRS 165A.330(1), 165A.350, 165A.370, 165A.465, 165A.470, 165A.475, 165A.480, 165A.485

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.460-515 requires [mandates] that the State Board for Proprietary Education establish standards for instructors and agents of commercial driver licensing schools including application and renewal procedures. This administrative regulation establishes the standards for instructors and agents including application and renewal procedures regarding commercial driver license training schools.

Section 1. Definitions. (1) "Classroom instructor" means a commercial driver license school instructor whom the school owner has qualified to perform classroom instruction only for the classroom sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools.

(2) "Skills Instructor" means a commercial drivers license school instructor who instructs the Range and Street sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools, June 2010 edition, and has met the licensing requirements of Section 2 of this administrative regulation.

Section 2. **An applicant for a Commerical Driver License Training School Skills Instructor or Agent license shall:**

(1)(a)[Application for Commercial Driver License Training School Skills Instructor and Agent.**][**An applicant for a commercial driver license training school instructor or agent shall:**][**(1)**]** Complete and submit Form PE 34, [a completed original] Application for a Commercial Driver License Training School Skills Instructor**; or**

(b)[, or**]** Complete and submit Form PE 36, [an original] Application for Licensure as a Commercial Driver License Training School Agent;

(2) Submit two (2) recent photographs no larger than 2 in. x 2 in.;

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6);

(4) Pay the nonrefundable initial licensure fee of $150;

(5) Provide a copy of the applicant's valid Class A CDL license;

(6) Provide proof of at least two (2) years of veritable commercial over the road driving experience; and

(7) Provide proof of receiving a passing score on the written examination and skills examination administered by the Kentucky State Police.

Section 3. [Successfully complete the written examination and skills examination administered by the Kentucky State Police; and

(6) Meet the standards of Section 2 of this administrative regulation.

Section 2.] State and National Criminal History Background Checks. [(1)] An applicant for a commercial driver license instructor or [agent and an applicant as a commercial driver license instructor or] agent shall undergo a state and national criminal history background check upon [at the time of] application and shall submit to being fingerprinted by the Kentucky State Police as required by KRS 165A.465.[, on the fingerprint card supplied by the board.

(2) Each fingerprint card submitted to the board shall be accompanied by a nonrefundable fee of thirty-four (34) dollars, payable by certified check or money order to the Kentucky State Treasurer.]

Section 4.[3.] Application for Renewal of Commercial Driver License Training School Instructor or Agent. On or before May 15 of each year, a licensed commercial driver license training school instructor or agent, or a licensed commercial driver license training school on behalf of the skills instructor or agent, shall:

(1)**(a)** Complete and submit Form PE 35 [a completed original] Renewal Application for a Commercial Driver License Training School Skills Instructor**; or**

(b)[, or**]** complete and submit Form PE 37 [a completed original] Renewal Application for a Commercial Driver License Training School Agent;

(2) Submit two (2) recent passport-size photographs [no larger than 2 in. x 2 in.];

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6); and

(4) Pay the nonrefundable renewal fee of $150.

Section 5. Classroom Instructors. The CDL school shall submit a PE 11 Form to the Board upon qualifying an individual as a classroom instructor.

Section 6. Temporary License for CDL School Agent or Skills Instructor. (1) The board shall issue to an applicant, who has completed the requirements of Sections 2 and 3 of this administrative regulation, a temporary permit for the performance of skills instructor or agency duties while the license application is being processed.

(2) The board shall provide the applicant and the licensed school a letter stating the applicant's application is in order and is being processed for applicant licensing.

(a) The board shall provide this letter within three (3) business days of receipt of a properly completed application.

(b) This letter shall serve as the applicant's temporary license until a regular license is issued.

(c) A copy of the board's letter shall be maintained by the applicant and be available for review upon request by the board's inspector or the Kentucky State Police.

(d) If the applicant is denied a license, the board shall issue a notice to the applicant and the applicant's school rescinding the applicant's temporary license for a skills instructor or agent.

Section 7.[4.] All fees required by this administrative regulation shall be submitted by certified check or money order payable to the "Kentucky State Treasurer."

Section 8.[5.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 34, "Application for Commercial Driver License Training School Instructor", **October** 2010 [~~PE-0008, August 2002~~] edition;

(b) Form PE 35, "Renewal Application for Commercial Driver License Training School Instructor", **October** 2010 [~~PE-0009, August 2002~~] edition;

(c) Form PE 36, "Application for Commercial Driver License Training School Agent", **October** 2010 [~~PE-0010, August 2002 edition~~]; and

(d) Form PE 37, "Renewal Application for Commercial Driver License Training School Agent", **October** 2010 [~~PE-0011, August 2002~~] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board for Proprietary Education, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK GABIS, Board Chair

APPROVED BY AGENCY: July 27, 2010

FILED WITH LRC: July 29, 2010 at 2 p.m.

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

PUBLIC PROTECTION CABINET
Office of Occupations and Professions
Board for Proprietary Education
(As Amended at ARRS, October 12, 2010)

201 KAR 40:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.500, 165A.510

STATUTORY AUTHORITY: KRS 165A.340(3), 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.500 and 165A.510 authorize the State Board for Proprietary Education to establish the standards for maintenance of student records, schedule of fees charged to students and refund policy, contracts and agreements involving licensed commercial driver license training schools, advertising and solicitation of students by commercial driver license training schools. This administrative regulation establishes these standards for commercial driver license training schools.

Section 1. Maintenance of Student Records and Student Roster. (1)(a) Each licensed commercial driver license training school shall maintain a permanent record of instruction given to each student to include the student instructional training progress report cards or sheets, transcripts, student written examination results, and yard and street student skills examination scores for so long as the commercial driver license training school holds a license or conducts business.

(b) If the commercial driver license training school discontinues operation, then the school shall comply with KRS 165A.390(5) and 201 KAR 40:155.

(2) The records to be maintained by the commercial driver license training school shall contain the following:

(a) Name and address of the commercial driver license training school;

(b) Name and address of the student;

(c) **A photocopy of,[**~~Photocopy~~**]** or the number of the student's Kentucky CDL instruction permit license;

(d) **A photocopy of,[**~~Photocopy~~**]** or the number of the student's CDL class A drivers license after completion of course requirements and successful completion of license examination requirements administered by the Kentucky State Police;

(e) The type and date of instruction given, whether classroom, yard, street, or behind-the-wheel, including the duration of instruction;

(f) The printed name and signature of the instructor on the student instruction card or progress record sheet or equivalent training record forms;

(g) Student's completed enrollment application;

(h) Student's completed student contract or enrollment agreement, including the student's signature and authorized school official's signature properly dated;

(i) Financial documents signed by the student including the student's completed loan agreement and accurate record of all fees paid to the school and government agencies;

(j) Student's attendance record;

(k) Student's progress report;

(l) Student's transcript including all examination grades and skills proficiency competency scores or evaluation received during course of instruction;

(m) [~~Student's completed independent self-study program, including grade;~~

~~(n)~~] Written examination and skills examination, including grade; and

(n)[~~(o)~~] Results of medical fitness examination and DOT-required drug test.

(3) The school shall furnish each commercial driver license training student upon the student's request [~~of the student~~] a copy of his or her student instruction record if [~~when~~] he or she ceases taking instruction at the school.

(4) [~~Each school shall create and maintain for each training class a student roster to be sent to the Kentucky State Police and the Kentucky Community and Technical College System during the first week of training that shall contain:~~

~~(a) Complete name of student, including any known nicknames or aliases, if any;~~

~~(b) Complete address of student;~~

~~(c) Social Security number;~~

~~(d) Date of birth of student;~~

~~(e) Class D Kentucky driver license number;~~

~~(f) Whether the student has previously enrolled in any commercial driver license training program, and if so, whether or not the student successfully completed the previous commercial driver license training program;~~

~~(g) Whether the student is enrolled in the commercial driver license training program as a refresher course; and~~

~~(h) The date the student is eligible for skills testing by the Kentucky Community and Technical College System.~~

~~(5)~~] All student records, school facilities, and school equipment are subject to inspection by the board and its representatives upon request and without prior notice to the school.

Section 2. Schedule of Fees Charged to Students and Refund Policy. (1) Each licensed commercial driver license training school shall publish a schedule of fees charged to students for instruction to include as applicable:

(a) Administrative fee;

(b) Registration/application fee;

(c) Tuition for instruction;

(d) Commercial driver license permit fee;

(e) Off-the-road and on-the-road training fees; [~~and~~]

(f) Room and board costs; and

(g) Department of Transportation drug test and medical fitness examination.

(2) The schedule of fees shall be published:

(a) In the school's catalog, brochure, and Web site;

(b) In the student contract or enrollment agreement; and

(c) Within the school's facility by being conspicuously displayed at the school.

(3) Each licensed commercial driver license training school shall establish and adhere to a refund policy to be published:

(a) In the school's catalog;

(b) In the student contract or enrollment agreement; and

(c) Within the school's facility by being conspicuously displayed at the school.

(4) At least five (5) days before a prospective student signs a contract or enrollment agreement, the commercial driver license school shall provide to the prospective student:

(a) The school catalog;
(b) The student contract or enrollment agreement; and
(c) The student loan agreement, if any.

Section 3. Contracts and Agreements Involving Licensed Commercial Driver License Training Schools. (1) Each licensed commercial driver license training school shall:

(a) File and maintain with the board an accurate and current list of those persons authorized by the school to execute student enrollment contracts and student tuition loan agreements on behalf of the licensed commercial driver license training school including a sample of each person's signature;

(b) Provide to each student who enters a contract or agreement with a licensed commercial driver training school a copy of the signed contract or enrollment agreement; and

(c) File the original of each student contract or enrollment agreement in the permanent student record maintained by the school.

(2) All contracts or enrollment executed by the licensed commercial driver license training schools and its students shall contain the following information:

(a) The name and address of the school. If the school is conducted under an assumed name or is operated by a corporation, partnership, or association, the contract or enrollment agreement shall contain the name of the individual owners or names of the officers of the corporation, association, or members of the partnership;

(b) A statement containing the following text in at least fourteen (14) point font: "This constitutes the entire agreement between the school and the student. No verbal agreements or promises shall be recognized by either the school or the student.";

(c) The school refund policy;

(d) A signature and date line for the student and an authorized school official;

(e) A complete description of all fees charged as set forth in Section 2 of this administrative regulation; and

(f) A statement containing the following text in at least fourteen (14) point font: "The Kentucky Revised Statutes and Kentucky Administrative Regulations governing licensed commercial driver training schools shall **be** [~~are~~] available at the facility upon request."

Section 4. Advertising and Solicitation of Students by Commercial Driver License Training Schools. (1) A person, school, institution, organization, company, association, or partnership shall not advertise or advertise to recruit students unless licensed by the board.

(2) A licensed commercial driver license training school shall not use any name other than its licensed name, nor shall it advertise or imply that it is "supervised," "recommended," "accredited," or "endorsed" by the Kentucky State Board for Proprietary Education. A school may state "Licensed by the Kentucky State Board for Proprietary Education" in its advertisements.

(3) A licensed commercial driver training school shall not:

(a) Claim nor imply that it guarantees employment upon successful completion of the program;

(b) Guarantee or imply that it guarantees the student will receive a commercial driver license training permit or commercial driver license;

(c) Make any false, misleading, or deceptive claims or guarantees of expected annual income or employee benefits;

(d) Hold itself out as being any type of establishment other than an educational or training establishment;

(e) Use a name that is like or deceptively similar to a name used by another commercial driver license training school;

(f) Advertise or imply that instruction may be given to students who fail the program or examinations without charge to the student unless that instruction without examination is contained in the student contract or enrollment agreement; **or[**~~and~~**]**

(g) Advertise or solicit in the "help wanted" section of any newspaper or periodical.

(4) A licensed commercial driver license training school shall submit a copy of all advertisements and directory listings to the board at least thirty (30) days prior to the scheduled publishing date.

Section 5. Inspections of Commercial Motor Vehicles Used by Commercial Driver License Training Schools, Including Mandatory Equipment and Out-of-Service Criteria. (1) Annual inspection. [~~The Kentucky State Police shall at least annually inspect all commercial driver license training vehicles.~~] The school shall maintain a copy of the results of the Kentucky State Police's annual inspections of the school's vehicle inventory, as listed with the board [~~inspection in the vehicle~~].

(2) In order to be approved, the vehicle shall be:

(a) Owned or leased by the licensed school;

(b) In safe operating condition;

(c) [~~Not more than ten (10) years old for vehicles used for on-the-road instruction, and not more than (15) years old for vehicles used for off-the-road instruction;~~

~~(d)~~] Included on the school's liability insurance policy as mandated by KRS 165A.475(1)(d);

(d)[~~(e)~~] Equipped with seat belts for each vehicle occupant as established by KRS 189.125;

(e)[~~(f)~~] Equipped with functioning side-view and rear-view mirrors;

(f)[~~(g)~~] Identified and clearly displayed on the front, sides, and rear of the vehicle, in letters not smaller than six (6) inches in height and in a color vividly contrasting with the color of the vehicle, the following:

1. Name of the commercial driver license training school; and
2. Words "Student Driver."

(3) Expiration of safety inspection and notification of vehicle changes. The commercial driver license training school shall:

(a) Maintain proof that the vehicle is inspected by the Kentucky State Police [~~board representative~~] annually and passes the inspection;

(b) Remove from use any vehicle that [~~which~~] has not passed the inspection by the Kentucky State Police; and

(c) File with the board written notice if [~~when~~] a vehicle has been added or deleted from the school's motor vehicle fleet and have submitted to the board a revised insurance policy as mandated by KRS 165A.475(1)(d) no later than five (5) business days from the date that the vehicle was added or deleted from the school's motor vehicle fleet.

MARK GABIS, Board Chair

APPROVED BY AGENCY: July 27, 2010

FILED WITH LRC: July 29, 2010 at 2 p.m.

CONTACT PERSON: Angela Evans, Board Counsel, Asst. Attorney General, Office of the Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5600, fax (502) 564-6801.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, October 12, 2010)

503 KAR 1:170. Career Development Program.

RELATES TO: KRS 15.310

STATUTORY AUTHORITY: KRS 15.330(1)(d), (h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(d) authorizes the Kentucky Law Enforcement Council (KLEC) to establish and prescribe minimum standards and qualifications for voluntary career development programs for certified peace officers and telecommunicators. This administrative regulation establishes a Career Development Program for Kentucky certified peace officers and telecommunicators.

Section 1. Definitions. (1) "Chief executive" means the highest level position in a law enforcement agency with direct operational and administrative responsibility for the policies and performance of the agency.

(2) "Conceptual skills course" means a course that emphasizes planning, organization, goal setting abilities, **or** strategic orientation, or provides material related to higher order abstractions that

force conceptual thinking.

(3) "Executive" means a position in the immediate line of authority under the chief executive who has the delegated responsibility for operational and administrative functions of the agency or division.

(4) "Human skills course" means a course relating to cultural diversity, problem solving, leadership, interpersonal communication, group communication, or training abilities.

(5) "KLEC" means the Kentucky Law Enforcement Council.

(6) "Manager" means a position within law enforcement or telecommunications:

(a) Between the executive and supervisor positions; and

(b) Which is responsible for the supervision of supervisory employees, and possibly involving planning, organization, public relations, discipline, or general administrative work.

(7) "Supervisor" means a position which is responsible:

(a) For the direct supervision of nonsupervisory personnel; and

(b) Possibly for line duties in law enforcement or telecommunications.

(8) "Technical skills course" means a course relating to operational or tactical abilities.

Section 2. Skill Area Determination. (1) Based on the definitions in Section 1 of this administrative regulation, the KLEC shall determine whether a law enforcement or telecommunications course should be categorized as a:

(a) Conceptual skills course;

(b) Human skills course; or

(c) Technical skills course.

(2) If a new course is approved or recognized by the KLEC, pursuant to 503 KAR 1:090 and 503 KAR 1:120, the council shall categorize the course in accordance with subsection (1) of this section.

(3) A law enforcement or telecommunications course may be categorized in up to two (2) different categories.

Section 3. Application for Career Development Program. A peace officer or telecommunicator who wishes to apply for a particular career step certificate shall:

(1) Complete a "CDP-1 Participant Commitment Form", which shall include the following:

(a) Applicant’s name and agency;

(b) Social Security number and date of birth;

(c) The program to which the applicant wishes to commit;

(d) Signature of the applicant; and

(e) Signature of the applicant's agency head**;[**~~**.**~~**]**

(2) Submit one (1) of the following application forms for the specific career development step for which the participant wishes to apply:

(a) Intermediate Law Enforcement Officer;

(b) Advanced Law Enforcement Officer;

(c) Law enforcement Officer Investigator;

(d) Law Enforcement Traffic Officer;

(e) Advanced Deputy Sheriff;

(f) Law Enforcement Supervisor;

(g) Law Enforcement Manager;

(h) Law Enforcement Executive;

(i) Basic Telecommunicator;

(j) Intermediate Telecommunicator;

(k) Advanced Telecommunicator;

(l) Telecommunications Manager/Director;

(m) Law Enforcement Training Officer;

(n) Law Enforcement Chief Executive;

(o) Law Enforcement Officer Advanced Investigator;

(p) Crime Scene Processing Officer;[~~or~~]

(q) Telecommunications Supervisor;

(r) Communications Training Officer**;[**~~**.**~~**]**

(3) Include the following information on the application form:

(a) Applicant’s name and agency;

(b) Social Security number and date of birth;

(c) Date of employment with current agency;

(d) Current rank or title and date of promotion to that position;

(e) Employment history;

(f) Training history;

(g) Educational history;

(h) Signature of program applicant; and

(g) College and training credit hours applied to the requirements of the particular program to which the applicant wishes to apply; and

(4) Submit an official copy of a transcript or other documentation showing that the applicant has successfully completed required:

(a) KLEC-approved or recognized courses; and

(b) College courses.

Section 4. In-service Training, College, Out-of-state Work Experience, Retroactive Credit. (1) The KLEC shall approve in-service training before it is applied toward a career development step.

(2) A program participant shall not receive more than one (1) program credit for an in-service training course.

(3) Retroactivity. Participants in the Career Development Program may be granted credit for college courses and KLEC-approved training received prior to the implementation of the program.

(4) Fifteen (15) hours of KLEC-approved classroom training may be substituted for one (1) hour of college credit by program participants.

(5) A program participant may apply out-of-state work experience toward the requirements of a career development step. To receive credit, the participant shall submit a written request describing the past experience and any supporting documentation to the KLEC for approval.

Section 5. Intermediate Law Enforcement Officer Certificate. To demonstrate proficiency in the Intermediate Law Enforcement Officer Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Sixty (60) percent (ninety-six (96) hours) shall be in technical skills development; and

(b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a bachelor's degree;

(b) Four (4) years of experience and an associate's degree;

(c) Four (4) years of experience and ninety-five (95) hours of college credit;

(d) Five (5) years of experience and eighty (80) hours of college credit;

(e) Six (6) years of experience and sixty-five (65) hours of college credit;

(f) Seven (7) years of experience and fifty (50) hours of college credit; or

(g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 6. Advanced Law Enforcement Officer Certificate. To demonstrate proficiency in the Advanced Law Enforcement Officer Career Step, a peace officer shall:

(1) Complete the Intermediate Law Enforcement Career Step;

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;

(b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(c) Twenty (20) percent (32 hours) shall be in conceptual skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;
(b) Six (6) years of experience and a bachelor's degree;
(c) Nine (9) years of experience and an associate's degree;
(d) Eight (8) years of experience and 110 hours of college credit;
(e) Nine (9) years of experience and ninety-five (95) hours of college credit;
(f) Ten (10) years of experience and eighty (80) hours of college credit;
(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
(h) Twelve (12) years of experience and fifty (50) hours of college credit.

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

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

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

Section 10. Law Enforcement Chief Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Chief Executive Career Step, a peace officer shall:
(a) Successfully complete:
1. Orientation for new chiefs, offered by the Department of Criminal Justice Training;
2. Mandatory duties of the sheriff, offered by the Department of Criminal Justice Training;
3. Department of Criminal Justice Training School for Strategic Leadership;
4. Three (3) police executive command courses, offered by the Department of Criminal Justice Training;
5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or
6. An executive level course as offered by the:
a. Federal Bureau of Investigation (FBI);
b. University of Louisville Southern Police Institute;
c. Northwestern University School of Police Staff and Command;
d. Institute of Police Technology and Management; or
e. Institute for Law Enforcement Administration;
(b) Successfully complete one (1) of the following:
1. 120 hours of training in conceptual or human skills development; or
2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and
(c) Have one (1) of the following combinations of full-time ex-

ecutive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

1. Two (2) years of experience and a bachelor's degree;

2. Three (3) years of experience and sixty (60) hours of college credit; or

3. Four (4) years of experience and thirty (30) hours of college credit.

(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 11. Law Enforcement Officer Investigator Certificate. To demonstrate proficiency in the Law Enforcement Investigator Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete 200 hours of KLEC-approved or recognized in-service training, consisting of:

(a) Eighty (80) hour Criminal Investigations I course or KLEC-approved or recognized equivalent; and

(b) 120 training hours in investigative courses identified by the KLEC; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Nine (9) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 12. Law Enforcement Traffic Officer Certificate. To demonstrate proficiency in the Law Enforcement Traffic Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Complete 200 hours of in-service training, consisting of:

(a) Eighty (80) hour basic accident investigation course or a KLEC-approved equivalent; and

(b) 120 training hours in traffic courses identified by the KLEC; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Nine (9) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 13. Advanced Deputy Sheriff Certificate. To demonstrate proficiency in the Advanced Deputy Sheriff Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Eighty (80) hours shall be in topics specific to sheriffs' responsibilities;

(b) Forty (40) hours shall be in technical skills development; and

(c) Forty (40) hours shall be in human skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a bachelor's degree;

(b) Four (4) years of experience and an associate's degree;

(c) Four (4) years of experience and ninety-five (95) hours of college credit;

(d) Five (5) years of experience and eighty (80) hours of college credit;

(e) Six (6) years of experience and sixty-five (65) hours of college credit;

(f) Seven (7) years of experience and fifty (50) hours of college credit; or

(g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 14. Basic Telecommunicator Certificate. To demonstrate proficiency in the Basic Telecommunications Career Step, a person shall:

(1)Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or

(b) Non-CJIS telecommunicator in accordance with KRS 15.560; and

(2) Successfully complete the following courses:

(a)[~~(1)~~] Twenty-four (24) hours of emergency medical dispatch;

(b)[~~(2)~~] Forty (40) hours of basic telecommunications;

(c)[~~(3)~~] Eight (8) hours of Crisis Negotiation;

(d)[~~(4)~~] Eight (8) hours of family violence;

(e)[~~(5)~~] Spanish for the Telecommunicator; and

(f)[~~(6)~~] Incident command.

Section 15. Communications Training Officer Certificate. To demonstrate proficiency in the Communications Training Officer Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or

(b) Non-CJIS telecommunicator in accordance with KRS 15.560;

(2) Complete the Basic Telecommunications Career Step;

(3) Complete the following courses:

(a) Forty (40) hour Communications Training Officer course;

(b) Eight (8) hour Communications Training Officer professional development course;

(c) Twenty-four (24) hours of elective courses from any telecommunications course approved by the KLEC, which shall include the sixteen (16) hour Communications Training Officer program if the course in paragraph (a) of this subsection is completed after January 1, 2011; and

(d) An eight (8) **hour [**~~hours~~**]** KLEC-approved telecommunications ethics course, unless previously completed for Intermediate Telecommunicator certificate; and

(4) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and forty-five (45) hours of college credit;

(b) Five (5) years of experience and forty (40) hours of college credit;

(c) Six (6) years of experience and thirty-five (35) hours of college credit;

(d) Seven (7) years of experience and thirty (30) hours of college credit;

(e) Eight (8) years of experience and twenty-five (25) hours of college credit; or

(f) Nine (9) years of experience and twenty (20) hours of col-

lege credit.

Section 16. Intermediate Telecommunicator Certificate. To demonstrate proficiency in the Intermediate Telecommunications Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or

(b) Non-CJIS telecommunicator in accordance with KRS 15.560; (2) Complete the Basic Telecommunications Career Step;

(3)[~~(2)~~] Complete the following courses:

(a) Eight (8) hours of customer service;

(b) Eight (8) hours of teambuilding;

(c) An eight (8) **hour [**~~hours~~**]** KLEC-approved telecommunications ethics course;

(d) Sixteen (16) hours of cultural awareness; **and**

(e) Sixteen (16) hours of elective courses from any telecommunications course approved by the KLEC; and

(4)[~~(d) Sixteen (16) hours of advanced emergency medical dispatch; and~~

~~(3)~~] Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Three (3) years of experience and thirty (30) hours of college credit;

(b) Four (4) years of experience and twenty-five (25) hours of college credit;

(c) Five (5) years of experience and twenty (20) hours of college credit;

(d) Six (6) years of experience and fifteen (15) hours of college credit;

(e) Seven (7) years of experience and ten (10) hours of college credit; or

(f) Eight (8) hours of experience and five (5) hours of college credit.

Section 17.[~~16.~~] Advanced Telecommunicator Certificate. To demonstrate proficiency in the Advanced Telecommunications Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or

(b) Non-CJIS telecommunicator in accordance with KRS 15.560;

(2) Complete the Intermediate Telecommunications Career Step;

(3)[~~(2)~~] Complete the following courses:

(a) Sixteen (16) hour Emergency Medical Dispatch (EMD) Advanced course;

(b) Twenty-four (24) hour Fire/HAZMAT Incident course; and

(c) Sixteen (16) hour tactical dispatch course;

(4)[~~Forty (40) hours of communications training officer; and~~

~~(b) An eight (8) hours KLEC-approved telecommunications ethics course;~~

~~(3)~~] Complete twenty-four (24)[~~eight (8)~~] hours of elective courses from any telecommunications course approved by the KLEC; and

(5)[~~(4)~~] Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and forty-five (45) hours of college credit;

(c) Five (5) years of experience and forty (40) hours of college credit;

(d) Six (6) years of experience and thirty-five (35) hours of college credit;

(e) Seven (7) years of experience and thirty (30) hours of college credit;

(f) Eight (8) years of experience and twenty-five (25) hours of college credit; or

(g) Nine (9) years of experience and twenty (20) hours of college credit.

Section 18.[~~17.~~] Telecommunications Supervisor Certificate. To demonstrate proficiency in the Telecommunications Supervisor Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or

(b) Non-CJIS telecommunicator in accordance with KRS 15.560;

(2) Complete the Basic Telecommunications Career Step;

(3)[~~(2)~~] Successfully complete:

(a) The forty (40) hour Telecommunications Executive Development[~~Supervisor Basic~~] course;[~~and~~]

(b) Sixteen (16) hours of supervision training approved by the KLEC;

(c) An eight (8) **hour [**~~hours~~**]** KLEC-approved telecommunications ethics course, if the telecommunicator has not previously **completed [**~~competed~~**]** the Intermediate telecommunicator certificate; and

(d) Thirty-two (32) hours of elective course in supervision training approved by the KLEC; and

(4)[~~(3)~~] Have one (1) of the following combinations of full-time telecommunications experience in a supervisory position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and an associate's degree;

(b) Three (3) years of experience and fifty-five hours of college credit;

(c) Four (4) years of experience and fifty (50) hours of college credit;

(d) Five (5) years of experience and forty-five (45) hours of college credit;

(e) Six (6) years of experience and forty (40) hours of college credit;

(f) Seven (7) years of experience and thirty-five (35) hours of college credit; or

(g) Eight (8) years of experience and thirty (30) hours of college credit.

Section 19.[~~18.~~] Telecommunications Manager/Director [~~Director/Manager~~] Certificate. To demonstrate proficiency in the Telecommunications Manager/Director[~~Director/Manager~~] Career Step, a person shall:

(1) Have active certification as a:

(a) CJIS telecommunicator in accordance with KRS 15.565; or

(b) Non-CJIS telecommunicator in accordance with KRS 15.560;

(2) Obtain the Telecommunications Supervisor Certificate;

(3)[~~(2)~~] Successfully complete:

(a) The forty (40) hour Telecommunications Executive Development course II; [~~and~~]

(b) The forty (40) hour telecommunications executive development III course; and

(c) Forty (40) hours of elective supervisory or management courses approved by the KLEC; and

(4)[~~(3)~~] Have one (1) of the following combinations of full-time telecommunications experience in a management position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and a bachelors degree;

(b) Four (4) years of experience and an associate's degree;

(c) Five (5) years of experience and sixty (60) hours of college credit;

(d) Six (6) years of experience and fifty-five (55) hours of college credit;

(e) Seven (7) years of experience and fifty (50) hours of college credit;

(f) Eight (8) years of experience and forty-five (45) hours of college credit;

(g) Nine (9) years of experience and forty (40) hours of college credit; or

(h) Ten (10) years of experience and thirty-five (35) hours of college credit.

Section 20.[~~19.~~] Law Enforcement Training Officer. To demonstrate proficiency in the Law Enforcement Training Career Step, a

peace officer shall have:

(1) Active peace officer certification in accordance with KRS 15.386(2);

(2) Have successfully completed the following:

(a) Intermediate Law Enforcement Officer Certificate;

(b) Advanced Law Enforcement Officer Certificate; and

(c) 120 hours of in-service training, which shall include:

1. Police Training Officer course;

2. Field Instructor course; and

3. Crisis Intervention Training or Law Enforcement Response to Special Needs Population; and

(3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Nine (9) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 21.[~~20.~~] Law Enforcement Officer Advanced Investigator. To demonstrate proficiency in the Law Enforcement Officer Advanced Investigator Career Step, a peace officer shall have:

(1) Active peace officer certification in accordance with KRS 15.386(2);

(2) Successfully completed the following:

(a) Law Enforcement Officer Investigator Certificate; and

(b) 160 hours of electives in investigations courses approved or recognized by the Kentucky Law Enforcement Council; and

(3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Nine (9) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 22.[~~21.~~] Crime Scene Processing Officer. To demonstrate proficiency in the Crime Scene Processing Officer career step, a peace officer shall have:

(1) Active peace officer certification in accordance with KRS 15.386(2);

(2) Successfully completed:

(a) 200 hours of in-service training, which shall include:

1. Crime Scene Investigations;

2. Digital Photography; and

3. Advanced Latent Fingerprints; and

(b) One (1) of the following:

1. Eighty (80) hours of electives in Investigations courses offered by the Department of Criminal Justice Training; or

2. The Kentucky Criminalistics Academy or the National Forensic Academy; and

(3) One (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and a master's degree;

(b) Six (6) years of experience and a bachelor's degree;

(c) Nine (9) years of experience and an associate's degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit;

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 23.[~~22.~~] Certificate of Completion. The KLEC shall issue a certificate and uniform lapel pin to a peace officer or telecommunicator upon completion of a career development step.

Section 24.[~~23.~~] Maintenance of Records. All training records shall be maintained in accordance with applicable provisions of KRS Chapter 171.

Section 25.[~~24.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Career Development Program Participant Commitment Form," KLEC Form CDP-1, **[**~~(~~June 2010 **[**~~edition)~~**]**[~~(November 2008 edition)~~];

(b) "Intermediate Law Enforcement Officer", KLEC Form CDP-2, **[**~~(~~November 2008**[**~~edition)~~**]** [~~(August 2006 edition)~~];

(c) "Advanced Law Enforcement Officer", KLEC Form CDP-3, **[**~~(~~November 2008**[**~~edition)~~**]**;

(d) "Law Enforcement Officer Investigator", KLEC Form CDP-4, **[**~~(~~November 2008**[**~~edition)~~**]**;

(e) "Law Enforcement Traffic Officer", KLEC Form CDP-5, **[**~~(~~November 2008**[**~~edition)~~**]**;

(f) "Advanced Deputy Sheriff", KLEC Form CDP-6, **[**~~(~~November 2008**[**~~edition)~~**]**;

(g) "Law Enforcement Supervisor", KLEC Form CDP-7, **[**~~(~~November 2008**[**~~edition)~~**]**;

(h) "Law Enforcement Manager ", KLEC Form CDP-8, **[**~~(~~November 2008**[**~~edition)~~**]**;

(i) "Law Enforcement Executive", KLEC Form CDP-9, **[**~~(~~November 2008**[**~~edition)~~**]**;

(j) "Basic Telecommunicator", KLEC Form CDP-10, **[**~~(~~November 2008**[**~~edition)~~**]**;

(k) "Intermediate Telecommunicator", KLEC Form CDP-11, **[**~~(~~July 2010**[**~~edition)~~**]** [~~(November 2008 edition)~~];

(l) "Advanced Telecommunicator", KLEC Form CDP-12, **[**~~(~~June 2010**[**~~edition)~~**]** [~~(November 2008 edition)~~];

(m) "Telecommunications Supervisor", KLEC Form CDP-13, **[**~~(~~June 2010**[**~~edition)~~**]** [~~(November 2008 edition)~~];

(n) "Telecommunications **[**~~Director/~~**]**Manager**/Director**", KLEC Form CDP-14, **[**~~(~~June 2010**[**~~edition)~~**]**;[~~(November 2008 edition); and~~]

(o) "Law Enforcement Chief Executive", KLEC Form CDP-15, **[**~~(~~November 2008**[**~~edition)~~**]**;

(p) "Law Enforcement Training Officer", KLEC Form CDP-16, **[**~~(~~November 2008**[**~~edition)~~**]**;

(q) "Law Enforcement Officer Advanced Investigator", KLEC Form CDP-17, **[**~~(~~November 2008**[**~~edition)~~**]**;[~~and~~]

(r) "Crime Scene Processing Officer", KLEC Form CDP-18, **[**~~(~~November 2008**[**~~edition)~~**]**; and

(s) "Communications Training Officer", KLEC Form CDP-19, **[**~~(~~June 2010**[**~~edition)~~**]**.

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

KEITH R. CAIN, Chair

APPROVED BY AGENCY: August 6, 2010

FILED WITH LRC: August 6, 2010 at 2 p.m.

CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Employment and Training
(As Amended at ARRS, October 12, 2010)

787 KAR 1:090. Unemployed worker's reporting requirements.

RELATES TO: KRS 341.350, 341.360, 341.370, 341.380
STATUTORY AUTHORITY: KRS 151B.020, 341.115(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of KRS Chapter 341. This administrative regulation establishes the registration and reporting requirements that an unemployed worker shall meet to draw benefits, the date when a claim shall be valid, the length of time a claim may be backdated, and the procedures for electronic, telephone, and mail claims.

Section 1. Registration for Work. (1) An unemployed worker shall be registered for work with a state employment service before he shall be eligible to receive benefits. A registration shall be considered filed if the unemployed worker completes the registration process.

(2) When an unemployed worker completes an initial application for benefits or reopens a claim, he shall be assigned a group classification code A or B based upon his reemployment prospects.

(a) Group A shall consist of any worker who is unemployed and is not subject to definite recall within a period of twelve (12) weeks from the date of filing of the initial or reopened claim.

(b) Group B shall include any worker who is:

1. Unemployed and has definite return prospects with his last employer within a period of twelve (12) weeks from the date of filing of the initial or reopened claim;

2. Unemployed because of a labor dispute in the establishment where he has been employed; or

3. A member of a union which shall be responsible for securing future employment.

(3) During any benefit year, an unemployed worker shall be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(4) The completion of an initial application for benefits shall serve as work registration for any group "B" unemployed worker.

Section 2. Initial or Reopened Claims for Benefits. (1) In order for an unemployed worker to file an initial or reopened claim for benefits, he shall complete **the Initial Claim Application, Form 401, by using**:

(a) An internet claim registration through the Web site provided by the agency for that purpose at https://uiclaims.des.ky.gov/ebenefit/;

(b) A telephone claim registration through the call center provided by the agency for that purpose; or

(c) An in person claim registration by reporting to a state employment service office that provides unemployment insurance assistance.

(2) If any issues regarding the unemployed worker's eligibility as provided by KRS 341.350 or a potentially disqualifying circumstance as provided by KRS 341.360 or 341.370 are detected, a fact finding investigation shall be conducted during which the unemployed worker shall be responsible for:

(a) Providing picture identification and valid proof of the worker's Social Security number from the Social Security Administration; and

(b) Presenting all facts in support of the application.

(3) The initial or reopened claim shall be dated as of the first day of the week in which the unemployed worker completes the procedure established in subsection (1) of this section.

(4) Upon the presentation by the unemployed worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary shall backdate the initial or reopened claim to the first day of the week in which the worker became unemployed, or the second calendar week preceding the date the worker filed, whichever is later.

Section 3. Claiming Weeks of Benefits. (1) Once an unemployed worker has filed an initial claim and established a benefit year, he shall claim his benefits on a biweekly basis by one (1) of the methods and within the time frames established in subsection (2) of this section.

(a) The unemployed worker shall claim either one (1) or both of the weeks of benefits.

(b) [~~Except as provided in paragraph (d) of this subsection, for the first two weeks of benefits claimed following the effective date of an initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period, except that a worker shall not claim benefits until thirteen (13) days after the day on which the worker filed the initial or reopened claim.~~

~~(c)~~] Except as provided in paragraph (d) of this subsection, for every two (2) week period of benefits being claimed following the effective date of the initial or reopened claim, the unemployed worker shall claim his benefits during the calendar week following the second week of the period.

(c)[~~(d)~~] Upon the presentation by the unemployed worker of reasons the secretary finds to be good cause for the failure of the worker to claim his benefits during the prescribed week, the secretary shall allow the worker to claim benefits for the two (2) calendar weeks preceding the date on which the worker claimed his benefits. In this case the worker shall next be eligible to claim benefits for the two (2) calendar weeks following the weeks of benefits claimed late.

(2) Except as provided in subsection (3) of this section, the unemployed worker shall complete a claim for benefits:

(a) Through the Web site provided by the agency for that purpose at https://uiclaims.des.ky.gov/ebenefit/, with the claim completed before midnight on the Saturday of the calendar week following the second week of the period claimed; or

(b) By telephone through the interactive voice response system provided by the agency for that purpose, with the claim completed between the hours of 2 p.m. and 9 p.m. Eastern Time on the Sunday, or between the hours of 7 a.m. and 7 p.m. Eastern Time on the Monday through the Friday of the calendar week following the second week of the period claimed.

(3)(a) The secretary shall direct an unemployed worker to claim benefits by mail if it is not possible for the worker to claim by either option provided in subsection (2) of this section due to:

1. Unavailability of those options for the type of benefits claimed;

2. Unavailability of those options due to technical problems; or

3. A physical or mental condition preventing the worker from using those options.

(b) A continued claim shall cover the week or weeks indicated on the Continued Claim Form.

(c) Any claim filed by mail shall be considered filed on the day it is deposited in the mail and postmarked as established in 787 KAR 1:230, Section 1(2).

(d) The provisions of this administrative regulation governing the dating and backdating of a continued claim shall also apply to a claim filed by mail, and unless the claim is filed within the prescribed time, it shall not be allowed.

Section 4. Employer Filed Claims. (1) An employer may file a claim on behalf of an unemployed worker if:

(a) The worker has definite recall rights within four (4) calendar weeks;

(b) The employer has a workforce of at least 100 workers at the time of the layoff;

(c) The employer submits the claim information in the required electronic format using the Mass Electronic Filing Cell Data and Formatting Guide; and

(d) Prior to the first time an employer files a claim on behalf of a worker, the employer submits a test sample of claim information and receives confirmation from the division that the information is in the required format prior to the date the period of unemployment will begin.

(2) The effective date of an employer filed claim shall be the first day of the week in which the period of unemployment began.

(3) An unemployed worker who does not file a continued claim for benefits established under an employer filed claim may file a new initial claim within the period of one (1) year from the effective date of the employer filed claim.

Section 5. Eligibility Review. The secretary may require an unemployed worker claiming benefits to report for the purpose of continued benefit eligibility review as a condition for payment of benefits. The requirement and interval for eligibility review shall be determined by:

(1) The worker's classification as established in Section 1(2) of this administrative regulation;

(2) The worker's individual employment and earning history; and

(3) The local labor market.

Section 6. (1) The secretary shall notify an unemployed worker if the secretary determines that the unemployed worker failed to file a claim for benefits or register for work within the specified time due to:

(a) The employer's failure to comply with 787 KAR Chapter 1;

(b) Coercion or intimidation exercised by the employer to prevent the prompt filing of a claim; or

(c) Failure by the division's personnel to discharge necessary responsibilities.

(2)(a) Except as provided in paragraph (b) of this subsection, an unemployed worker shall have fourteen (14) days after receipt of the notification required by subsection (1) of this section from the secretary within which to file a claim.

(b) A claim shall not be filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The initial claim application "Form 401", revised 8/10;

(b) The "Continued Claim Form", revised 10/95; and

(c)[~~(b)~~] "Mass Electronic Filing Cell Data and Formatting Guide", revised 03/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of the Division of Unemployment Insurance, 275 East Main Street, 2 CD, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM MONTEROSSO, Executive Director

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 13, 2010 at 11 a.m.

CONTACT PERSON: William Monterosso, Executive Director; Office of Employment and Training, 275 East Main, 2C, Frankfort, Kentucky 40602, phone (502) 564-5331, fax (502) 564-7452.

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(As Amended at ARRS, October 12, 2010)

806 KAR 9:030. Adjusters, apprentice adjusters; licenses, restrictions.

RELATES TO: KRS 304.9-430(3)(a)[~~304.9-070~~], 304.9-430(2)(g), 304.9-432(2)(d)

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) **authorizes[**~~provides that~~**]** the Commissioner[~~Executive Director~~] of the Department[~~Office~~] of Insurance **to[**~~may~~**]** promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. This administrative regulation restricts the persons whom an adjuster may represent thus preventing any conflicts of interest, and clarifies the circumstances under which the restriction for holding only one (1) apprentice adjuster license applies.

Section 1. (1) An independent, staff, or public adjuster's license issued to an applicant pursuant to the provisions of the Insurance Code shall not authorize representing the interest of both insurer and the insured or claimant. A licensee shall not represent the interest of both insurer and the insured or claimant.

(2) **When the application is filed [**~~At the time of application~~**]**, an applicant shall elect to act solely on behalf of:

(a) Insurers; or

(b) Persons claiming benefits under insurance or annuity contracts.

(3) A licensee shall **[**~~be deemed~~**]** to act in a fiduciary capacity to his principal.

(4) The commissioner[~~executive director~~] shall not issue a license to a public adjuster until the prospective licensee posts a bond or irrevocable letter of credit in the amount of $20,000[~~$1000~~] and in accordance with 806 KAR 9:210.

Section 2. [~~A license shall, by label, distinguish clearly between the following categories, as elected by the licensee pursuant to Section 1(2) of this administrative regulation.~~

~~(1) A licensee who acts solely on behalf of insurers shall be known as an "independent adjuster".~~

~~(2) A licensee who acts solely on behalf of persons claiming benefits under insurance or annuity contracts shall be known as a "public adjuster."~~

~~Section 3.~~] An individual may hold only one (1) apprentice adjuster license until the individual is issued an adjuster license in accordance with KRS 304.9-430. Once an individual has held an adjuster license in accordance with KRS 304.9-430, the individual may again be eligible to hold one (1) apprentice adjuster license.[~~Section 4. Application for License. (1) An individual applying for an adjuster license or an apprentice adjuster license shall submit a completed Form 8301.~~

~~(2) A business entity applying for an adjuster license shall submit completed Form 8301-BE.~~

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

~~(a) Form 8301, "Individual Insurance Producer License Application (7-12-2002 edition)"; and~~

~~(b) Form 8301-BE, "Business Entity License Application (7-15-2002 edition)".~~

~~(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

SHARON P. CLARK, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: July 13, 2010

FILED WITH LRC: July 14, 2010 at 3 p.m.

CONTACT PERSON: DJ Wasson, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Non-Depository Division of Financial Institutions
(As Amended at ARRS, October 12, 2010)

808 KAR 12:002. Definitions for 808 KAR Chapter 12.

RELATES TO: KRS 286.8-010(1), KRS 286.8-170(1), 286.8-

125[~~286.8-020(1)(a)~~]

STATUTORY AUTHORITY: KRS 286.8-140(1)[~~KRS 286.8-010(1)(a)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner[~~executive director~~] to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. This administrative regulation establishes definitions for 808 KAR Chapter 12.

Section 1. Definitions. (1) "Amount financed" means the face amount of the mortgage note as that term is used in KRS 286.8-125.

(2) **"Control" is defined by KRS 286.8-010(9).**

(3) "Control person" means the following:

(a) A director, general partner, managing member, or executive officer;

(b) Any person who:

1. Directly or indirectly has the right to vote ten (10) percent or more of a class of a voting security; or

2. Has the power to sell or direct the sale of ten (10) percent or more of a class of voting securities;

(c) In the case of a partnership or limited liability company, any person that has the right to receive upon dissolution ten (10) percent or more of the capital; or

(d) Any person that exercises control.[~~Definition. "Control" means the power to vote twenty-five (25) percent or more of any class of voting stock of the company.~~]

ROBERT D. VANCE, Secretary

CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 4, 2010

FILED WITH LRC: August 13. 2010 at noon

CONTACT PERSON: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Non-Depository Division of Financial Institutions
(As Amended at ARRS, October 12, 2010)

808 KAR 12:021. Licensing and registration.

RELATES TO: KRS 286.8-010, 286.8-030(1), 286.8-032, 286.8-034, 286.8-060, 286.8-080, 286.8-100, 286.8-140(4), 286.8-255, 286.8-260, 286.8-285, 286.295

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. **[**~~KRS 286.8-030(1)(a) states that it is unlawful for any person to transact business in Kentucky as a mortgage loan company or mortgage loan broker if that person is not licensed with the Department of Financial Institutions or otherwise entitled to an exemption from licensure. KRS 286.8-100 states that no licensee shall establish or maintain a branch transacting business in Kentucky without filing an application and receiving prior written approval from the commissioner. KRS 286.8-255(1) requires mortgage loan originators and mortgage loan processors to register with the Department of Financial Institutions in order to originate mortgage loans in Kentucky. KRS 286.8-140(4) states that the commissioner has discretion to require filings and fees relating to licensure and registration to be submitted electronically with the Nationwide Mortgage Licensing System.~~**]** This administrative regulation establishes procedures for licensure, registration, and electronic submission of filings and fees with the Nationwide Mortgage Licensing System.

Section 1. Licensure as a Mortgage Loan Company or Mortgage Loan Broker. (1) A person applying for licensure as a mortgage loan company or mortgage loan broker shall submit the following:

(a) A completed Form MU1, Uniform Mortgage Lender/Mortgage Broker Form;

(b) A completed Form MU2, Uniform Mortgage Biographical Statement & Consent Form for each control person designated on the direct owners and executive officers section of the Form MU1;

(c) A reviewed or audited financial statement prepared by a Certified Public Accountant in accordance with Generally Accepted Accounting Principles dated the previous year end to the date of submission of the Form MU1. A financial statement shall include a balance sheet, income statement, statement of cash flows, and all relevant notes **[**~~thereto~~**]**. If applicant is a start-up company, an initial Statement of Condition and a pro-forma income statement shall be submitted in lieu of the financial statement;

(d) An original bond furnished by a surety company authorized to conduct business in Kentucky. The name of the principal insured on the bond shall[~~must~~**]** match exactly the full legal name of applicant. The bond shall be submitted on the following form in an amount not less than the amount required by KRS 286.8-060(1):

1. For a mortgage loan company, Surety Bond for Mortgage Loan Company Form; or

2. For a mortgage loan broker, Surety Bond for Mortgage Loan Broker Form;

(e) A certified copy of the following:

1. If a corporation, the Corporate Charter or Articles of Incorporation and Bylaws;

2. If a limited liability company, the Articles of Organization and Operating Agreement; or

3. If a partnership of any form, the Partnership Agreement;

(f) A Certificate of Authority or a Certificate of Good Standing issued by the Kentucky Secretary of State dated not more than sixty (60) days prior to the submission of the Form MU-1;

(g) If applicant will be operating in Kentucky under a name other than its legal name, a file-stamped copy of the Certificate of Assumed Business Name issued by the Kentucky Secretary of State;

(h) If required to do so by KRS 286.8-032(6), documentation that a managing principal designated by applicant has successfully completed the educational training set forth in KRS 286.8-032(6);

(i) A completed State License Confirmation Form for each state where applicant is licensed or otherwise authorized to conduct business as a mortgage loan company or mortgage loan broker or has been licensed or otherwise authorized to conduct business as a mortgage loan company or mortgage loan broker in the last five (5) years;

(j) If the principal office will be located in a residence, a completed Disclosure of Location at a Residence Form; and

(k) The fees set forth in KRS 286.8-034(1).

(2) A person applying for renewal of a mortgage loan company or mortgage loan broker license pursuant to KRS 286.8-034(3) and prior to December 1 shall complete the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A completed Annual Report of Activity Form, updated 07/2010; and

(c) The fee set forth in KRS 286.8-034(3).

(3) A person applying for renewal of a mortgage loan company or mortgage loan broker license through reinstatement pursuant to KRS 286.8-034(4) shall complete the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A completed Annual Report of Activity Form, updated 08/2010; and

(c) The fees set forth in KRS 286.8-034(3) and 286.8-034(4).

Section 2. Registration of a Branch. (1) No branch shall be approved unless it is controlled, managed, and supervised by the applicant's principal office.

(2) A person applying for registration of a branch shall submit the following:

(a) A completed Form MU3, Uniform Mortgage Branch Office Form;

(b) A copy of the lease or deed for the branch;

(c) A completed Branch Authorization Form, updated 08/2010;

(d) If the branch will be located in a residence, a Disclosure of

Location at a Residence Form, updated 08/2010; and

(e) The fee set forth in KRS 286.8-034(1)(b).

(3) A person applying for renewal of a branch registration pursuant to KRS 286.8-034(3) and prior to December 1 shall submit the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A completed Annual Report of Activity Form, updated 08/2010; and

(c) The fee set forth in KRS 286.8-034(3).

(4) A person applying for renewal of a branch registration through reinstatement pursuant to KRS 286.8-034(4) shall submit the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) A completed Annual Report of Activity Form, updated 08/2010; and

(c) The fees set forth in KRS 286.8-034(3) and (4).

Section 3. Registration of a mortgage loan originator or mortgage loan processor. (1) A person applying for registration as a mortgage loan originator or mortgage loan processor shall submit the following:

(a) A completed Form MU4 - Uniform Individual Mortgage License/Registration & Consent Form;

(b) Submit to and bear the cost of a Federal Bureau of Investigations background records check as part of an application for registration as a mortgage loan originator or mortgage loan processor pursuant to KRS 286.8-255(2);

(c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255; and

(d) The fee set forth in KRS 286.8-255(2)(b).

(3) A person applying for renewal of a mortgage loan originator or mortgage loan processor registration pursuant to KRS 286.8-255(4) shall submit the following:

(a) A completed Uniform Individual Mortgage License/Registration Renewal Form available online at http://mortgage.nationwidelicensingsystem.org;

(b) Submit to and bear the cost of a Federal Bureau of Investigations background records check as part of a renewal or reinstatement application for registration as a mortgage loan originator or mortgage loan processor pursuant to KRS 286.8-255(4) or 286.8-255(5) if the applicant's Federal Bureau of Investigations background records check currently on file with the Kentucky Department of Financial Institutions is more than three (3) years old;

(c) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260; and

(d) The fee set forth in KRS 286.8-255(4).

(4) A person applying for renewal of a mortgage loan originator or mortgage loan processor registration through reinstatement pursuant to KRS 286.8-255(5) shall submit the following:

(a) The required attestation that all information is correct as available online at http://mortgage.nationwidelicensingsystem.org;

(b) Certification that applicant has successfully completed all education and testing required by KRS 286.8-255 and 286.8-260;

(c) Submit to and bear the cost of a Federal Bureau of Investigations background records check as part of a renewal or reinstatement application for registration as a mortgage loan originator or mortgage loan processor pursuant to KRS 286.8-255(4) or 286.8-255(5) if the applicant's Federal Bureau of Investigations background records check currently on file with the Kentucky Department of Financial Institutions is more than three (3) years old; and

(d) The fees set forth in KRS 286.8-255(4) and 286.8-255(5).

Section 4. In addition to the requirements set forth **in this administrative regulation** **[**~~herein~~**]**, an applicant applying for registration, renewal**,** or reinstatement as a mortgage loan originator **shall[**~~must~~**]** provide proof that the mortgage loan originator holds or is covered by a bond furnished by a surety company authorized to conduct business in Kentucky. If the mortgage loan originator is procuring his or her own bond, the bond shall be submitted on the Surety Bond for Individual Mortgage Loan Originators Form **[**~~referenced herein~~**]** and in an amount determined by annual loan origination as follows:

(a) If the annual loan volume of the applicant is less than ten million dollars the surety bond shall be in an amount not less than $15,000; or

(b) If the annual loan volume of the applicant is $10 million dollars or more, the surety bond shall be in an amount not less than $20,000.

Section 5. Financial Responsibility. An applicant seeking registration or renewal under KRS 286.8-255 **shall[**~~must~~**]** demonstrate the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle. Every applicant **shall[**~~must~~**]** authorize the commissioner to obtain a credit report containing a **credit** **[**~~Fair Isaac Corporation (FICO)~~**]** score to aide in making this determination. If the applicant possesses a threshold **credit** **[**~~FICO~~**]** score of 600 or better, then the applicant **shall** **[**~~will be deemed to~~**]** have met this requirement. If the applicant possesses a **credit** **[**~~FICO~~**]** score of less than 600, the commissioner may review the applicant's credit report for the following information to make this determination:

(a) Any outstanding judgments, excluding judgments arising solely from medical expenses for the applicant or an immediate family member;

(b) Any outstanding tax liens or other governmental liens;

(c) Any foreclosures occurring within five (5) years of the date of application or renewal;

(d) Any bankruptcies occurring within five (5) years of the date of application or renewal; and

(e) Any delinquent accounts occurring within five (5) years of the date of application or renewal.

Section 6. Electronic Submission of Filings and Fees through the Nationwide Mortgage Licensing System. (1) A person applying for licensure or registration pursuant to Sections 1, 2, 3, and 4 of this administrative regulation shall electronically submit the following with the State Regulatory Registry, LLC, at http://www.stateregulatoryregistry.org/NMLS, as part of the nationwide mortgage licensing system:

(a) All forms required by Sections 1, 2, 3, and 4 of this administrative regulation, as applicable;

(b) Fingerprints and any other information necessary to obtain the background records checks referenced in **Section 3 of** this administrative regulation; and

(c) All fees referenced in this administrative regulation.

(2) All forms, documentation, fees, or information that are not available for electronic submission directly through the Nationwide Mortgage Licensing System shall be submitted directly to the department.

(3) Any fees assessed by the State Regulatory Registry, LLC, to process the electronic submissions set forth in subsection (1) of this section shall be borne by the applicant.

Section 7. Abandoned applications. If any applicant fails to provide or respond to a request for additional information within ninety (90) days of submission to the department, the application **shall be[**~~is deemed~~**]** abandoned. Any applicant seeking licensing or registration after its application has been abandoned **shall[**~~must~~**]** reapply and resubmit **the[**~~any~~**]** required information.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form MU1 Uniform Mortgage Lender/Mortgage Broker Form"**, 1/25/2010**;

(b) "Form MU2 Uniform Mortgage Biographical Statement & Consent Form"**, 1/25/2010**;

(c) "Form MU3 Uniform Branch Office Form"**, 1/02/2008**;

(d) "Form MU4 Uniform Individual Mortgage License/Registration & Consent Form"**, 1/25/2010**;

(e) "Surety Bond for Mortgage Loan Company", updated 08/2010;

(f) "Surety Bond for Mortgage Loan Broker", updated 08/2010;

(g) "Surety Bond for Mortgage Loan Originators", updated 08/2010;

(h) "State License Confirmation Form", updated 08/2010;

(i) "Annual Report of Activity Form", updated 08/2010;

(j) "Disclosure of Location at a Residence Form updated 08/2010"; and

(k) "Branch Authorization Form", updated 08/2010**.[**~~;~~**]**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. This material may also be obtained from the department's Web site at http://www.kfi.ky.gov.

ROBERT D. VANCE, Secretary
CHARLES A. VICE, Commissioner
APPROVED BY AGENCY: August 11, 2010
FILED WITH LRC: August 13, 2010 at noon
CONTACT PERSON: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Non-Depository Division of Financial Institutions
(As Amended at ARRS, October 12, 2010)

808 KAR 12:022. Examination and investigation fees.

RELATES TO: KRS **286.8-046, 286.8-090,** 286.8-170; KRS 286.8-180
STATUTORY AUTHORITY: KRS 286.8-140(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. **[**~~KRS 286.8-170(5) states that a mortgage loan company or mortgage loan broker shall pay a fee for each examination conducted by the department of Financial Institutions based on fair compensation for time and actual expense. KRS 286.8-180(3) states that a mortgage loan company or mortgage loan broker may be assessed the cost of any investigation or hearing conducted by the department.~~**]** This administrative regulation establishes the fees for such examinations and investigations.

Section 1. The fee for each examination and investigation conducted by the department shall be forty-two (42) dollars per hour for each examiner conducting the examination or investigation, **plus all additional reasonable costs incurred [**~~and shall include all reasonable expenses incurred by the department as a result of the examination or investigation~~**]**.

Section 2. (1) A mortgage loan company or mortgage loan broker shall pay the fee established in Section 1 of this administrative regulation within thirty (30) days of the date of the fee bill sent following the examination or investigation.

(2) If the fee is not paid within the thirty (30) day time period, the department shall send the mortgage loan company or mortgage loan broker a notice of failure to pay the fee and a demand for immediate payment.

(3) If the mortgage loan company or mortgage loan broker does not pay the fee within thirty (30) days from the date of demand for immediate payment, the mortgage loan company or mortgage loan broker and its control persons shall:

(a) Be subject to the penalties established in KRS 286.8-090 and 286.8-046;

(b) Remain liable for the payment of all owed fees; and

(c) Be subject to administrative action by the department and on its behalf.

ROBERT D. VANCE, Secretary
CHARLES A. VICE, Commissioner
APPROVED BY AGENCY: August 11, 2010
FILED WITH LRC: August 13, 2010 at noon
CONTACT PERSON: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Non-Depository Division of Financial Institutions
(As Amended at ARRS, October 12, 2010)

808 KAR 12:023. Recordkeeping.

RELATES TO: KRS 286.8-160, 286.8-170
STATUTORY AUTHORITY: KRS 286.8-140(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-160(2) **authorizes the commissioner to promulgate administrative regulations establishing preservation requirements for records governed by KRS Chapter 286.8 [**~~states that records governed by KRS Chapter 286.8 shall be preserved for such time as the commissioner may require, not to exceed five (5) years after a mortgage loan application is completed, whether approved or rejected, or on mortgage loans paid in full, whichever is longer. KRS 286.8-160(6) and (7) state that any person who ceases to operate as a mortgage loan company or mortgage loan broker in Kentucky shall, prior to the discontinuance of business, notify the commissioner of the physical location where the records are kept and shall designate a custodian of records. KRS 286.8-170(1) states that each branch office shall keep detailed records of all transactions occurring there and shall furnish full control records to the principal office. In addition, KRS 286.8-170(3) makes the affairs of every registrant or licensee subject to periodic, special or other examination by the commissioner with or without notice to the registrant or licensee~~**]**. This administrative regulation establishes the records that **shall[**~~must~~**]** be preserved and the time periods of preservation.

Section 1. Preservation of Records. Unless a longer period is required by federal law, records shall be maintained by a mortgage loan broker or mortgage loan company in accordance with the Records Retention Schedule.

Section 2. Notification Procedure. At least ten (10) days prior to the cessation of business, a mortgage loan company or mortgage loan broker shall submit a completed Notification of Cessation of Business, Location of Physical Records, and Designation of Records Custodian Form.

Section 3. Branch Offices. A branch office shall:

(1) Keep the detailed records of all transactions conducted in the mortgage lending process and which are performed by the branch office employees, in either electronic or written format; and

(2) Make **these[**~~such~~**]** detailed records available immediately upon the request of an examiner authorized by the commissioner to conduct **the[**~~such~~**]** examination.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Records Retention Schedule", updated 08/2010; and

(b) "Notification of Cessation of Business, Location of Physical Records, and Designation of Records Custodian Form", updated 08/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. or at http://www.kfi.ky.gov.

ROBERT D. VANCE, Secretary
CHARLES A. VICE, Commissioner
APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 13, 2010 at noon

CONTACT PERSON: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Non-Depository Division of Financial Institutions
(As Amended at ARRS, October 12, 2010)

808 KAR 12:024. Change of address, name, control, or agent for service of process.

RELATES TO: KRS 286.8-032(8)(b), (9), 286.8-036, 286.8-060, 286.8-075

STATUTORY AUTHORITY: KRS 286.8-140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. **[**~~KRS 286.8-032(8)(b), 286.8-036, and 286.8-060 state that a licensee shall notify the department of a change of address or name and shall update its license and surety bond upon such change. KRS 286.8-032(9) states that a licensee shall notify the department of a change in the status of an agent for service of process. KRS 286.8-075 states that a licensee shall receive approval from the commissioner before executing a change of control.~~**]** This administrative regulation establishes the procedure for notifying the department of and receiving approval for **these[**~~such~~**]** changes.

Section 1. Change of Address, Name, Control, or Agent for Service of Process. (1) A licensee changing its address, name, or agent for service of process shall notify the commissioner:

(a) At least ten (10) days prior to the change of address or name; and

(b) Five (5) days prior to the change of agent for service of process.

(2) A licensee that wants to engage in a transaction resulting in a change of control shall notify the commissioner at least thirty (30) days in advance with **the information [**~~such information as~~**]** necessary for the commissioner to determine whether the requirements of KRS Chapter **286.8[**~~286.6~~**]** will be satisfied upon the change of control. The commissioner shall notify the licensee whether the request is approved or denied within thirty (30) days.

(3) A licensee changing its address, name, control, or agent for service of process shall update this information in Nationwide Mortgage Licensing System (NMLS) within the same time periods set forth in subsections (2) and (3) of this section.

ROBERT D. VANCE, Secretary
CHARLES A. VICE, Commissioner

APPROVED BY AGENCY: August 11, 2010

FILED WITH LRC: August 13, 2010 at noon

CONTACT PERSON: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Non-Depository Division of Financial Institutions
(As Amended at ARRS, October 12, 2010)

808 KAR 12:026. Procedures for distributing and using funds from the Mortgage Fraud Prosecution Fund.

RELATES TO: KRS 286.8-150, 286.8-225, 286.8-227

STATUTORY AUTHORITY: KRS 286.8-140(1), 286.8-227

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.8-140(1) authorizes the commissioner to promulgate administrative regulations necessary to accomplish the basic purposes of KRS Chapter 286.8. KRS 286.8-227 **requires the Commissioner to promulgate administrative regulations, in consultation with the Attorney General and local prosecutors, establishing requirements for the distribution of funds in the Mortgage Fraud Prosecution Fund [**~~provides that the commissioner is responsible for the distribution of funds in the Mortgage Fraud Prosecution Fund and shall, in consultation with the Attorney General and local prosecutors develop administrative regulations for the use of these funds~~**]**. This administrative regulation establishes the procedures for distributing and using funds from the Mortgage Fraud Prosecution Fund.

Section 1. Definitions. **[**~~As used in this administrative regulation unless the context clearly requires otherwise:~~**]** (1) "Commissioner" means the commissioner of the department.

(2) "Department" means the Department of Financial Institutions. (3) "Mortgage Fraud Prosecution Fund" or "Fund" means the account established under KRS 286.8-225 and 286.8-227.

(4) "Prosecutorial agency" means:

(a) The office of the Kentucky Attorney General;

(b) The office of the United States Attorney;

(c) The office of any county or commonwealth attorney in the Commonwealth of Kentucky; or

(d) Any other state or federal regulatory agency.

Section 2. Authorization for Use of Funds. **(1)** The commissioner is authorized to disburse funds held in the mortgage fraud prosecution fund to cover the expenses of the department or any prosecutorial agency for the purposes of prosecuting or aiding the prosecution of fraudulent activities in the mortgage lending process, whether the prosecution arises from an investigation initiated or conducted by the department or from the independent investigation of any law enforcement agency. In addition, the funds may be used to cover the expenses for training related to the prevention, detection, or investigation of mortgage-related fraud, and consumer education related to mortgage fraud.

(2) [~~Such~~**]** Prosecution and other authorized expenses may relate to the following:

(a) Training;

(b) Investigation;

(c) Trial preparation and trial, including discovery;

(d) Witness expenses;

(e) Travel expenses;

(f) Sentencing;

(g) Appeal; or

(h) Consumer education initiatives.

Section 3. Application and Approval for Disbursement of Funds. (1) The department may utilize any of the following for application, approval, and disbursement of funds to prosecutorial agencies:

(a) A written agreement or memorandum of understanding with a prosecutorial agency covering actual expenses for a set period of time or the actual expenses for a particular prosecution, investigation, training, or initiative. Each agreement or memorandum of understanding shall be signed by the commissioner and an authorized representative of the prosecutorial agency and shall identify:

1.[~~(1)~~**]** The effective period;

2.[~~(2)~~**]** The expenses to be covered;

3.[~~(3)~~**]** The dollar limit, if any; and

4.[~~(4)~~**]** The manner and form of billing expenses and the process for disbursement of funds**.[**~~;~~**]**

(b) A written application submitted to the department for payment of prosecution-related or other authorized expenses shall include the following information:

1. The prosecutorial agency applicant name, address, and contact information;

2. A detailed description and estimated amount of the expenses sought to be covered, or if expenses have already been incurred, proof of incurrence of such expenses;

3. A detailed description of the cases, persons, and crimes being considered for prosecution, if applicable; and

4. A detailed description of the expenses, training, or initiative being proposed or sought for reimbursement.

(c) For funds sought to be utilized by the department for the purposes set forth in Section 2 of this administrative regulation, the commissioner shall maintain an accounting and memorandum of all **these** **[**~~such~~**]** expenditures which shall include the information required under paragraph (b) of this subsection.

(2) The commissioner shall approve or deny the application for funds in writing. The approval shall contain the terms of disbursement including the maximum amount to be reimbursed, the billing process to be implemented, and reporting requirements for the disbursement of funds.

(3) A completed invoice or voucher in a form acceptable to the commissioner shall be submitted for all prosecution expenses for which payment or reimbursement from the account is sought.

Section 4. Funding Criteria. Allocation of funds by the commissioner to prosecutorial agencies shall be based on funds available in the mortgage fraud prosecution fund and the following:

(1) The likelihood that any investigation or inquiry will lead to criminal prosecution;

(2) Whether criminal prosecution is imminent; or

(3) A demonstration of need for funds to accomplish the purposes set forth in Section 2 of this administrative regulation.

Section 5. Disbursement Limitation. **[**~~(1)~~**]** The commissioner is not required to disburse any funds unless the mortgage lending fraud prosecution account contains sufficient funds to cover the agreed disbursements. **The commissioner and the department shall not[**~~(2) At no time shall the commissioner or the department~~**]** be required to make disbursements from the department's own operating funds.

Section 6. Confidentiality of Information Provided in Funding Applications. The commissioner shall deem confidential and withhold from public inspection for **the[**~~such~~**]** time as he considers necessary all information provided by prosecutorial agencies that:

(1) Is furnished to the department on the express condition that the information remain confidential; or

(2) That the commissioner deems necessary to protect the public welfare by avoiding the premature or unwarranted disclosure of information concerning any criminal investigation, prosecution, or litigation.

ROBERT D. VANCE, Secretary
CHARLES A. VICE, Commissioner
APPROVED BY AGENCY: August 11, 2010
FILED WITH LRC: August 13, 2010 at noon
CONTACT PERSON: Shaun T. Orme, Assistant General Counsel, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390 ext. 282, fax (502) 573-2183.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, October 12, 2010)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.215**[**~~, EO 2009-535~~**]**[~~2008-668~~]
STATUTORY AUTHORITY: KRS 230.215(2), 230.260**[**~~, EO 2009-535~~**]**[~~2008-668~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission[~~authority~~] to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260 authorizes the commission[~~authority~~] to promulgate administrative regulations that regulate conditions under which thoroughbred racing shall be conducted in Kentucky and to establish safety standards for jockeys. **[**~~EO 2009-535~~**]**[~~2008-668~~]**[**~~, effective June 12, 2009~~**]**[~~July 3, 2008~~]**[**~~, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the commission.~~**]** This administrative regulation establishes the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey, who has not ridden in a race previously, may ride in three (3) races before applying for a license as a jockey or apprentice jockey if:

(1) The person is a licensed stable employee, assistant trainer, or trainer with at least one (1) year of service with a racing stable;

(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship, as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions, to be permitted the probationary mounts;

(3) The starter has schooled the person in breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;

(4) The stewards determine that the person:

(a) Intends to become a licensed jockey;

(b) Possesses the physical ability to be a jockey; and

(c) Has demonstrated his ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race; and

(5) The person has prior oral or written approval of the stewards.

Section 2. Qualifications for License. In addition to the requirements applicable to licensees under 810 KAR 1:025, a holder of a license as a jockey or apprentice jockey:

(1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;

(2) Shall have served at least one (1) year with a racing stable;

(3) Shall have ridden in at least three (3) races; and

(4) Shall, if required by the stewards, to protect the health and safety of the jockey, other jockeys, the horses, and the welfare of the betting public provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. (1) An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefore, shall:

(a) Be approved by the stewards as to competency of horsemanship, as demonstrated by meeting the requirements in Section 1(2), (3), and (4)(b) and (c) of this administrative regulation;

(b) Be granted an amateur jockey's license; and

(c) Have his amateur status duly noted on the daily race program.

(2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. (1) Any person sixteen (16) years of age or older, who has not been licensed previously as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

(a) Ten (10) pounds until he has ridden five (5) winners;

(b) Seven (7) pounds until he has ridden an additional thirty-five (35) winners;

(c) If he has ridden a total of forty (40) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year; and

(d) If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year, or until the 40th winning mount whichever occurs first.

(2)(a) After the completion of conditions in subsection (1) of this section, a contracted apprentice may claim three (3) pounds for one (1) year if riding horses owned or trained by his original contract employer if his contract has not been transferred or sold since his first winner.

(b) The original contract employer shall be the party to the contract who was the employer at the time of the apprentice jockey's first winner.

(c) Apprentice allowance shall not be claimed for a period in excess of two (2) years from the date of the rider's fifth winner

unless an extension has been granted in accordance with subsection (4) of this section.

(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years.

(a) These contracts shall be:

1. Approved by the stewards;

2. Filed with the commission; and

3. Binding in all respects on the parties to the contract.

(b) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate.

(4) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more because of service in the armed forces of the United States, physical disablement, attendance in an institution of secondary or higher education, restrictions on racing, or other valid reason, the commission, upon recommendation of the stewards and after consultation with the racing entity which approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. (1) All contracts between an employer owner or trainer and employee rider shall be subject to 810 KAR Chapter 1.

(2) All riding contracts for terms longer than thirty (30) days, and any amendments, cancellation, or transfer, shall be in writing with the signatures of the parties notarized, and shall be approved by the stewards and filed with the commission.

(3) The stewards shall approve a riding contract and permit parties to participate in racing in this state if the stewards find that:

(a) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of the execution of the contract;

(b) The contract employer possesses the character, ability, facilities, and financial responsibility conducive to developing a competent race rider; and

(c) If it is a contract for an apprentice jockey, the contract provides for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from the date of execution.

Section 6. Restrictions as to Contract Riders. A rider shall not:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer; and

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. (1) Any rider not prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer.

(2) These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the commission.

(3) Any rider employed by a racing stable on a regular salaried basis shall not ride against the stable which employs him.

(4) An owner or trainer shall not employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The fee to a jockey, in the absence of special agreement to the contrary, shall be as follows:

(a) Purse $599 and under: winning mount, $33; second place mount, $33; third place mount, $33; losing mount, $33.

(b) Purse $600 to $699: winning mount $36; second place mount, $33; third place mount, $33; losing mount, $33.

(c) Purse $700 to $1,499: winning mount, ten (10) percent of win purse; second place mount, $33; third place mount, $33; losing mount, $33.

(d) Purse $1,500 to $1,999: winning mount, ten (10) percent of win purse; second place mount, $35; third place mount, $33; losing mount $33.

(e) Purse $2,000 to $3,499: winning mount, ten (10) percent of win purse; second place mount, $45; third place mount, $40; losing mount, $38.

(f) Purse $3,500 to $4,999: winning mount, ten (10) percent of win purse; second place mount, $55; third place mount, $45; losing mount, $40.

(g) Purse $5,000 to $9,999: winning mount, ten (10) percent of win purse; second place mount, $65; third place mount, $50; losing mount, $45.

(h) Purse, $10,000 to $14,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $50.

(i) Purse, $15,000 to $24,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $55.

(j) Purse, $25,000 to $49,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $65.

(k) Purse, $50,000 to $99,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $80.

(l) Purse, $100,000 and up: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $105.

(2) A jockey fee shall be considered earned by a rider if he is weighed out by the clerk of scales, with the following exceptions:

(a) If a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay an appropriate fee to each rider engaged for the race;

(b) If a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, reasonable cause; or

(c) If a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or the commission, after the result has originally been made official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards due to circumstances under which a jockey could not reasonably be expected to be physically present at the required time, A rider shall not be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards or the clerk of scales due to circumstances under which a jockey could not reasonably be expected to ride; and upon arrival shall report to the clerk of scales his engagements. If a rider fails for any reason to arrive in the jockey room no later than one (1) hour before post time of a race in which he is scheduled to ride, the

clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. While a rider is outside of the jockey room, a rider shall not have contact or communication with any person other than an owner or trainer for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room to conduct specific business previously approved by the stewards so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and when weighing out, the rider shall declare overweight, if any.

(2)(a) A rider shall not pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; and

(b) A rider shall not pass the scale with more than five (5) pounds overweight.

(3) A horse shall not be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, rider's safety helmet, and rider's safety vest shall not be included in a rider's weight.

Section 13. Wagering. A rider shall not place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all of these wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. (1) Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened.

(2) Each jockey shall wear:

(a) The cap and jacket racing colors registered in the name of the owner of the horse he is to ride;

(b) Stock tie;

(c) White or light breeches;

(d) Top boots;

(e) A safety vest and safety helmet that meet[~~meets~~] the standards set forth in **subsections (4) and (5) of this section[**~~(4) and (5) below, respectively~~**]**[~~"Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM F1937-04"~~]; and

(f) A number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program.

(3) [~~A safety vest shall not weigh more than two (2) pounds.~~

~~(4)~~] The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

(4)[~~(5)~~] A jockey mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the jockey shall provide sufficient evidence that his helmet has a tag, stamp, or similar identifying marker **indicating[**~~indication~~**]** that it meets one of the following safety standards:

(a) ASTM International Standard, ASTM F1163-04a;

(b) British Standards, BS EN 1384:1997 or PAS 015:1999; or

(c) Australian/New Zealand Standard, AS/NZS 3838:2006.

(5) A jockey mounted on a horse or stable pony **at[**~~on~~**]** any location under the jurisdiction of the commission shall wear a safety vest at all times. The safety vest shall not weigh more than two (2) pounds**. If requested by a commission official, the jockey shall provide sufficient evidence that his safety vest has a tag, stamp, or similar identifying marker indicating that it meets one (1) of the following safety standards[**~~and must comply with one (1) of the following minimum standards~~**]**:

(a) British Equestrian Trade Association (BETA):2000 Level 1;

(b) Euro Norm (EN) 13158:2000 Level 1;

(c) **ASTM International Standard, ASTM[**~~American Society for Testing and Materials (ASTM)~~**]** F2681-08;

(d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or

(e) Australian Racing Board (ARB) Standard 1.1998.

Section 15. Advertising. (1) A jockey shall not wear advertising or promotional material of any kind (whether for a nonprofit or for-profit entity) on clothing within one (1) hour before or after[~~of or during~~] a race, unless:

(a)1.**[**~~a.~~**]** The material advertises or promotes the Jockey's Guild in the form of the picture of a jockey's boot or the picture of a wheelchair, with no additional picture or logo;

2.[~~b.~~**]** The material advertises or promotes the[~~is the National Thoroughbred Racing Association (NTRA)~~] Permanently Disabled Jockey's Fund in the form of the pictures of its logo, with no additional picture or logo; or

3.[~~c.~~**]** The picture or logo has previously been approved by the current owner, association, and the stewards under the process set forth in this administrative regulation, and this approval is reflected in the commission's official records;**[**~~and~~**]**

(b)[~~2.~~**]** The material complies with the size restrictions of subsection (2)(b) of this section;**[**~~or~~

~~(b) The following criteria are met:~~**]**

(c)[~~1.~~**]** The material meets the advertising standards listed in subsection (2) of this section;**[**~~and~~**]**

(d)[~~2.~~**]** Written approval by the following is submitted to the commission:**[**~~as provided herein:~~**]**

1.[~~(a)~~**]** The managing owner of the horse, or authorized agent of the managing owner who acts with actual authority and has been specifically authorized in writing to sign the written approval on behalf of the managing owner. Written authorization shall be evidenced by completion and return to the commission of the "Authorized Agent License Application" form. If the owner is a business entity, in lieu of filing the "Authorized Agent License Application" form, the owner may file duly adopted resolutions of the business entity authorizing the agent to act on its behalf and remit the twenty-five (25) dollar license application fee**;**

2.[~~. (b)~~**]** The jockey riding the horse or the authorized agent of the jockey who acts with actual authority and has been specifically authorized in writing to sign the written approval on behalf of the jockey. Written authorization shall be evidenced by completion and return to the commission of the "Authorized Agent License Application" form;

3.[~~(c)~~**]** The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section; **and**

4.[~~(d)~~**]** The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections (2)(b) and (3) of this section**; and[**~~.~~**]**

(e)[~~3.~~**]** Written approval required pursuant to subjection **(1)(d) is[**~~(1)(b) shall be~~**]** evidenced by completion and return to the commission of the "Request to Wear Advertising and Promotional Materials" form. The form shall be completed and submitted to the stewards not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn. No other form of approval shall be accepted by the commission.[~~The jockey obtains the written approval established in subsection (4) of this section.~~]

(2) Advertising or promotional material displayed on jockey clothing shall:

(a) Not compete with, conflict with, or infringe upon sponsorship agreements applicable to the racing association race or to the race meet in progress; and

(b) Comply with the following size restrictions**:[;]**

1. A maximum of thirty-two (32) square inches on each thigh of the pants on the outer side between the hip and knee and ten (10) square inches on the rear of the pant at the waistline at the base of the spine;

2. A maximum of twenty-four (24) square inches on boots and leggings on the outside of each nearest the top of the boot; and

3. A maximum of six (6) square inches on the front center of the neck area (on a turtleneck or other undergarment).

(3) A sponsorship shall not be permitted by a person or entity whose message, business reputation, or ongoing business activity may be considered as obscene or indecent to a reasonable person.

(4)(a) The party presenting the advertising or promotional opportunity to the owner and jockey (including without limitation, the owner and jockey) shall disclose in writing all material terms, including financial, regarding the advertising or promotional opportunity to the owner, **and the jockey;**

(b)[jockey, and the commission.**]** The division of proceeds from any advertising or promotional material placed in accordance with this **administrative** regulation is subject to agreement between the owner and the jockey**;**

(c)[.**]** The agreement between the owner and jockey shall be made in writing on the "Owner/Jockey Advertising **and[**or**]** Promotional Materials Agreement"**[**and submitted to the commission**]** not later than 5 p.m. two (2) days prior to the day of the race in which the advertising and promotional materials will be worn**;**

(d)[. No other form**]** of agreement or contract shall **not** be used**; and**

(e)[.**]** Any party who fails to comply with this or any other provision provided in this **administrative** regulation may be subject to penalties by the commission in accordance with **KRS Chapter 230 and 810 Chapter 1[**810 KAR 1:025, 810 KAR 1:028, and as otherwise permitted by law**]**.[For advertising or promotional material addressed in subsection (1)(b) of this section, approval in writing of all three (3) of the following shall be required:

1. The managing owner of the horse, or the owner's duly authorized agent;

2. The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section; and

3. The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections 2(b) and (3) of this section.

(b) Written approval shall be evidenced by completion and return of the "Request to Wear Advertising and Promotional Materials." The form shall be completed and submitted to the stewards not later than the time of entry of the subject race.]

(5) As a condition for approval of advertising or promotional material, either the owners, the stewards, or the licensed racing association may require a personal viewing of the proposed material as it is to be displayed, to determine that the requirements of this section are met.

(6)**[**This administrative regulation shall not prohibit**]** The sponsor of a licensed racing association race or race meeting **may display[**from displaying**]** advertising or promotional material on an association saddlecloth if it does not interfere with the clear visibility of the number of the horse.

(7) Advertising content other than that approved in this administrative regulation shall not be permitted.

(8) This administrative regulation shall not infringe upon or limit the common law rights of a racing association to eject or exclude persons, licensed or unlicensed, from association grounds, or to apply the association's internal rules regarding other forms of advertising not addressed in this or any other applicable statute or **administrative** regulation, **if the[**provided such**]** internal rules have been previously filed with and approved by the commission or its**[**duly**]** authorized representative[or to apply the association's internal rules regarding advertising].

Section 16. Viewing Films or Tapes of Races. (1) Every rider shall **check[**be responsible for checking**]** the film list posted by the stewards in the jockey room the day after riding in a race.

(2) The posting of the film list shall be considered as notice to all riders whose names are listed to present themselves **when[**at the time**]** designated by the stewards to view the patrol films or video tapes of races.

(3) Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

Section 17. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a)**[**"Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM [F1937-04]";**]**[and]

[(b)**]** "Request to Wear Advertising and Promotional Material", KHRC 009-01, **10/10[**5/10**]**[March 2005].

(b)[(c)**]** "Authorized Agent License Application", KHRC 009-02, 5/10; and

(c)[(d)**]** "Owner/Jockey Advertising or Promotional Materials Agreement", KHRC 009-03, 5/10.

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

(3) This material may also be obtained from the Kentucky Horse Racing Commission[Authority] Web site at http:\\www.khrc.ky.gov/.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: June 8, 2010
FILED WITH LRC: June 15, 2010 at 11 a.m.
CONTACT PERSON: Susan Bryson Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, October 12, 2010)

810 KAR 1:026. Racing associations.

RELATES TO: KRS 230.215(2), 230.225(1), 230.260(8)**[**, EO 2009-535**]**[2008-668]

STATUTORY AUTHORITY: KRS 230.215(2), 230.225(1), 230.260(8)**[**, EO 2009-535**]**[2008-668]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.225(1), and 230.260(8) require the commission[authority] to promulgate administrative regulations establishing conditions governing horse racing. **[**EO 2009-535, effective June 12, 2009, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the commission.**]**[EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the commission.] This administrative regulation establishes the requirements for racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track. (1) The grounds and facilities of an association shall be maintained in a manner that provides for the:

(a) Comfort and safety of patrons, employees, and other persons whose business requires their attendance; and

(b) Health and safety of horses that are stabled, or exercise, or entered to race at the association.

(2) The grounds and facilities of an association shall be:

(a) Neat and clean;

(b) Painted; and

(c) In good repair.

(3) An association shall have implements adequate to maintain

a uniform track, weather conditions permitting.

Section 2. Results Boards, Totalizators Required. An association shall provide and maintain mechanically operated totalizators and electronic boards that show odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. (1) An association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip.

(2) An association shall have in attendance one (1) or more persons qualified to keep the starting gates in good working order whenever the gates are in use.

(3) An association shall provide for periodic inspections of the starting gates.

Section 4. Stabling. (1) An association barn and stall shall be:

(a) Constructed of fire-resistant material;

(b) Clean, sanitary, and equipped for adequate drainage; and

(c) Maintained in good repair.

(2)(a) Prior to the opening of a race meeting, the commission shall submit to the racing secretary a list of locations of approved off-track stabling facilities from which horses shall be permitted to race.

(b) The locations shall be considered association grounds.

Section 5. Stands for Officials. (1) An association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials.

(2) The stands and their locations shall be approved by the commission.

(3) The floor of patrol judge stands shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings. An association shall have:

(1) Red and white quarter poles;

(2) Green and white eighth poles; and

(3) Black and white 16th poles.

Section 7. Lighting. (1) An association shall provide and maintain flood lights that provide adequate illumination in the stable area and parking area.

(2) If an association conducts night racing, it shall provide adequate track lighting.

Section 8. Facilities for Stable Employees. (1) An association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities, which shall include showers, toilets, and wash basins for stable employees.

(2) Personnel shall not be permitted to sleep in a stall or barn loft.

Section 9. Facilities for Jockeys. (1) An association shall provide and maintain adequate facilities for jockeys scheduled to ride each day.

(2) The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, and snack bar.

Section 10. Facilities for Commission. (1) An association shall provide adequate office space for the commission on its grounds.

(2) An association shall provide the following to the commission:

(a) A season box, marked "Kentucky Horse Racing Commission", of six (6) to eight (8) seats; and

(b) A number of parking places sufficient for the commission and commission staff.

(3) An association shall honor for access to preferred parking facilities and other areas on its grounds a commission or Association of Racing Commissioners International ring, lapel button, or automobile emblem.

Section 11. Sanitary Facilities for Patrons. An association shall, on every racing day, provide sanitary toilets and wash rooms, and free drinking water adequate for the number of patrons and persons having business at the association that comply with applicable statutes, administrative regulations, codes or ordinances.

Section 12. Manure Removal. (1) An association shall provide and maintain manure pits of the size and construction adequate to handle refuse from stalls.

(2) The contents of the manure pits shall be removed from the stable area as promptly as is possible.

Section 13. Photo Finish Cameras. (1) An association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races.

(2) One (1) of the photo finish cameras shall be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges the number of prints of finishes requested.

(3) An association shall maintain a one (1) year file of all photo finishes.

Section 14. Patrol Films or Video Tapes. (1) During a race meeting, an association shall provide and maintain personnel and equipment necessary to record and produce motion pictures or video tapes that clearly record each race from start to finish.

(2) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(3)(a) A film and video tape shall be:

1. Retained and secured by an association for at least one (1) year; and

2. Made available to the commission and stewards upon demand.

(b) Upon order of the stewards, a visual record of a race that has raised a question, dispute, or controversy shall be filed with the commission.

(4) Films and video tapes shall be made available:

(a) For viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed; and

(b) To members of the press.

Section 15. Ambulances. (1) An association shall provide and maintain at least one (1) man-ambulance and one (1) horse-ambulance whenever horses are permitted to exercise or race.

(2) An ambulance shall be:

(a) Equipped;

(b) Manned;

(c) Ready for immediate duty; and

(d) Located at an entrance to the racing strip.

Section 16. (1) Except as provided by subsection (2) of this section, an association shall equip and maintain a first aid facility that is:

(a) Equipped with at least two (2) beds; and

(b) Attended by a licensed physician and registered nurse during race hours.

(2) An association shall not be required to maintain a first aid facility, if the association:

(a) Has an ambulance on standby on its premises during race hours; and

(b) Can transport an injured individual to a fully-equipped hospital emergency room in:

1. Five (5) minutes or less; and

2. An ambulance manned by a certified paramedic and certified emergency medical technician.

(3) A paramedic provided pursuant to subsection (2) of this section shall be equipped with:

(a) Heart monitor and defibrillator;

(b) Cellular phone; and

(c) Airways intubation equipment.

Section 17. Track Kitchen. An association shall provide a track kitchen within the stable area, maintained in a clean and sanitary manner that complies with applicable statutes, administrative regu-

lations, codes, or ordinances at all times horses are stabled on association grounds.

Section 18. Communication System. An association shall install and maintain in good working service a communication system between the stewards' stand and:

(1) Patrol judges;

(2) Parimutuel department;

(3) Starting gate;

(4) Public address announcer; and

(5) Clerk of the scales.

Section 19. Fire Prevention. (1) An association shall have a fire prevention and suppression program.

(2) The commission shall not approve the commencement of a race meeting, unless, within fifteen (15) days before commencement of the race meeting, the state or local fire marshal:

(a) Has inspected the association; and

(b) Certified that the association plant and stable area meets fire safety requirements.

(3) An association shall maintain a firefighting unit of trained personnel that has high-expansion foam fire extinguishers, and other equipment required by the local fire inspection authority.

(4) An association shall prohibit:

(a) Smoking in stalls, under shed rows, and in feed rooms;

(b) Open fires and oil or gas lamps in the stable area; and

(c) Locking of stalls occupied by horses.

Section 20. Association Security. (1) An association shall provide and maintain security services, night and day, in and about association grounds.

(2) An association shall furnish to the commission a report on any disturbances, drunkenness, or disorderly conduct committed by a person on association grounds.

Section 21. Security. (1) An association shall exclude from association grounds a person designated to be excluded by order of the commission or stewards.

(2) An association shall implement security measures to protect a horse on association **grounds[**~~ground~~**]** from being injured by being frightened or tampered with.

(3) An association shall exclude from the paddock area, race strip, and winner's entrance a person who:

(a) Does not have an immediate connection with the horses entered; and

(b) Is not a commission member, racing official, or accredited member of the news media.

Section 22. Vendors and Suppliers. (1) A vendor shall comply with procedures and requirements established by an association.

(2) An association shall not attempt to control or monopolize sales to owners, trainers, or stable employees.

(3) An association shall not grant a concession to a vendor of feed, racing supplies, or racing services.

(4) A vendor of horse feeds or medications shall file with the commission veterinarian a list of products which he proposes to sell, including a new preparation or medication.

(5) An association shall not permit the sale of an alcoholic beverage except beer within the stable area.

Section 23. Ejection or Exclusion From Association Grounds. (1)(a) An association shall for probable cause eject or exclude from association grounds a person:

1. Believed to be engaged in:

a. A bookmaking activity;

b. Solicitation of bets; or

c. Touting;

2. Who as a business or for compensation, either directly or indirectly:

a. Accepted anything of value to be wagered, transmitted, or delivered for wager to a pari-mutuel wagering enterprise; or

b. Participated in the transaction; or

3. Who attempted to use tax exempt admissions credentials not issued to him by the association.

(b) An association shall immediately submit a report on the ejection or exclusion from association grounds of a person who engaged in activity prohibited by paragraph (a) of this subsection to the:

1. Commission;

2. Stewards; and

3. Police.

(2) An association shall eject or exclude from its stable area a person who is not:

(a) Licensed to conduct an activity which requires his presence in the stable area;

(b) An accredited member of the news media;

(c) A guest of a licensed owner or trainer accompanied by the owner or trainer; or

(d) Accompanied by, and under the control and supervision of a:

1. Racing official;

2. Association security guard; or

3. Association public relations department representative.

(3)(a) A report of an ejection or exclusion from association grounds for any reason shall be made immediately to the commission and the stewards.

(b) A report shall state the:

1. Name of person ejected or excluded;

2. Reasons for the ejection or exclusion; and

3. Facts relating to the ejection or exclusion.

Section 24. Ownership of Associations. An association shall file with the commission a revised list of persons whose identity is required by 810 KAR 1:025 immediately upon transfer of a beneficial interest or control in the association.

Section 25. Plan of Association Grounds. (1) An association shall file with the commission maps and plans of association grounds, showing:

(a) Structures;

(b) Piping;

(c) Fire hydrants;

(d) Fixed equipment;

(e) Racing strip, noting elevation as filled, drained, and gapped; and

(f) Composition of track base and cushion.

(2) An association shall file revised maps or plans of association grounds upon any material change.

Section 26. Attendance Report and Badge List Report; Tax Exempt Credentials. (1) An association shall file with the commission a copy of the form required by KRS 137.180 and 138.480, "Race Track Pari-mutuel and Admissions Report," Revenue Form 73A100, incorporated by reference in 103 KAR 3:050.

(2) A tax exempt admission credential shall not be transferable.

Section 27. Financial Report. Within sixty (60) days after the close of its fiscal year, an association shall file:

(1) Three (3) copies of its balance sheet; and

(2) A comparison to the prior year.

Section 28. Horseman's Account and Horseman's Bookkeeper. (1) An association shall maintain a bank account that shall:

(a) Be separate from its other accounts;

(b) Be Entitled "horsemen's account"; and

(c) Contain sufficient funds to pay money owing to horsemen for:

1. Purses;

2. Stakes;

3. Rewards;

4. Claims; and

5. Deposits.

(2) Withdrawals from the horsemen's account shall be subject to audit by the commission at any time.

(3)(a) For all races, purse money shall be available to earners after the result of the race in which the money was earned has been declared official; and**:**

1. For race dates where all samples are reported by the commission laboratory as passed at the screening level, within twenty-

four (24) hours after receipt of the report by the commission; or

2. For race dates where one (1) or more sample is reported by the commission laboratory as suspicious at the screening level, within twenty-four (24) hours after receipt of the final report by the commission.

(b) **If[**~~In cases where~~**]** a horse is disqualified and an appeal has been filed, purse money shall be available to other participants entitled to purse money in the amount they would have earned had a horse not been disqualified. The purse money to which the disqualified participant would be entitled shall be held in escrow by the association until final adjudication of a dispute over which persons are entitled to money.[~~Except as provided by paragraph (b) of this subsection, purse money shall be available to earners within forty-eight (48) hours, dark days excluded, after the result of the race in which the money was earned has been declared official.~~

~~(b) The stewards shall order money withheld until final adjudication of a dispute over which persons are entitled to money.~~]

(4)(a) Except for jockey fees, a deduction from purse money shall not be made, unless the deduction has been requested in writing by the:

1. Person to whom purse money is payable; or

2. Authorized representative of the person to whom purse money is payable.

(b) Whether or not a deduction request is made, at the close of a race meeting, the horsemen's bookkeeper in charge of the horsemen's account shall mail to an owner a duplicate of each record of a deposit, withdrawal, or transfer of funds that affects his racing account.

(5) The horsemen's bookkeeper in charge of the horsemen's account shall be bonded.

Section 29. Outriders. (1) An association shall employ at least two (2) outriders.

(2) An outrider shall:

(a) Escort starters to the post; and

(b) Assist in the returning of all horses to the unsaddling area.

(3) An outrider shall:

(a) Only lead a horse that has demonstrated unruliness; and

(b) Assist in the control of a horse that might cause injury to a jockey or others.

(4) Whenever horses are permitted on the racing strip for exercising or racing, an outrider shall be:

(a) Present on the racing strip;

(b) Mounted; and

(c) Ready to assist in the:

1. Control of an unruly horse; or

2. Recapture of a loose horse.[~~(5) When a person exercises a horse during training hours, or accompanies a horse to the starting gate during racing hours, he shall wear a safety vest that meets the "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM F1937-04," incorporated by reference in 810 KAR 1:009.~~]

Section 30. A person mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. If requested by a commission official, the person shall provide sufficient evidence that his helmet has a tag, stamp, or similar identifying marker indicating that it meets one of the following safety standards:

(1)[~~(a)~~**]** ASTM International Standard, ASTM F1163-04a;

(2)[~~(b)~~**]** British Standards, BS EN 1384:1997 or PAS 015:1999; or

(3)[~~(c)~~**]** Australian/New Zealand Standard, AS/NZS 3838:2006.

Section 31. Any person mounted on a horse or stable pony on any location under the jurisdiction of the commission, all assistant starters, and any person handling a horse in a starting gate shall wear a safety vest at all times. **If requested by a commission official, the person shall provide sufficient evidence that his safety vest has a tag, stamp, or similar identifying marker indicating that it meets one (1) of the following safety standards;[**~~The safety vest shall comply with one (1) of the following minimum standards:~~**]**

(1)[~~(a)~~**]** British Equestrian Trade Association (BETA):2000 Level 1;

(2)[~~(b)~~**]** Euro Norm (EN) 13158:2000 Level 1;

(3) ASTM International Standard, ASTM[~~(c) American Society for Testing and Materials (ASTM)~~**]** F2681-08;

(4)[~~(d)~~**]** Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or

(5)[~~(e)~~**]** Australian Racing Board (ARB) Standard 1.1998.

Section 32. Valets. (1) An association shall employ a number of licensed valets sufficient to attend each rider on a day's racing program.

(2) A valet shall be under the immediate supervision and control of the clerk of scales.

(3) A rider shall not employ a valet or be attended by a person other than the valet assigned to him by the clerk of scales.

(4) A valet shall not be assigned to the same rider for more than two (2) consecutive racing days.

(5) A valet shall:

(a) Be responsible for the care and cleaning up of the apparel and equipment of his assigned rider;

(b) Ensure his rider has the proper equipment and colors for a race;

(c) Present the proper equipment and attend the saddling of his rider's mount; and

(d) Attend the weighing out of his rider.

(6) A valet or other jockey room attendant shall not place a wager, directly or indirectly, on races run while he serves as a valet for himself or another.

(7)(a) An association shall provide uniform attire for valets.

(b) A valet shall wear the attire provided by an association whenever he performs his duty within public view.

Section 33.[~~32.~~] Minimum Purse and Stakes Values. (1) An association shall not program or run any race for which the purse is less than $2,000 in cash, without special permission of the commission.

(2) An association shall not program or run a stakes race the added value of which is less than $10,000 in cash added by the association to stakes fees paid by owners.

(3) The minimum cash amounts paid by the association shall be exclusive of:

(a) Nomination;

(b) Eligibility;

(c) Entrance;

(d) Starting fees;

(e) Cash awards;

(f) Premiums;

(g) Prizes; or

(h) Objects of value.

Section 34.[~~33.~~] Maximum Number of Races. An association shall not program or run more than nine (9) races on a racing day without permission of the commission.

Section 35.[~~34.~~] Two (2) Year Old Races. Beginning on March 1 of each year, an association shall program in the conditions book at least four (4) two (2) year old races each week.

Section 36.[~~35.~~] (1)(a) Exculpatory clauses. Stall applications, entry forms, condition books, and other agreements between persons or entities licensed by the Kentucky Horse Racing Commission regarding the stabling of horses, the racing of horses, the training of horses or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licensed associations, shall not contain provisions which absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury or damage caused or contributed to by the acts or omissions of any licensee or its agents or employees, except for:

1. Ordinary negligence which causes or contributes to loss, injury or damage to horses while on the premises of a licensed association; and

2. Ordinary negligence which causes or contributes to personal injury or property damage, including loss, loss of use, injury or

damage to horses arising from the use of grass fields or gallops owned or controlled by the licensed association.

(b) Subject to the exception in paragraph (a) of this subsection, all licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. A licensee shall not attempt to limit liability of any person or entity for gross negligence or intentional wrongdoing.

(2) Constructive notice to and consent of licensees. All persons licensed by the Kentucky Horse Racing Commission shall be deemed, as a condition of licensure, to have notice of and to have consented to exculpatory provisions, which comply with the limitations set forth in this administrative regulation, included in agreements between licensees and in conditions of racing established by a licensed association. Exculpatory provisions which exceed the limitations set forth in this administrative regulation shall be void and unenforceable in their entirety.

(3) Model provision. The following provision shall be deemed to comply with the limitations set forth in this administrative regulation: All Kentucky Horse Racing Commission licensees, including but not limited to the host association, owners, trainers, jockeys, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in these activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training, and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless and covenant not to sue all other licensees so participating for:

(a) Ordinary negligence which causes or contributes to loss, loss of use, injury or damage to horses while on the premises of (name of licensed association); and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury**,** or damage to horses arising from the use of grass fields or gallops owned or controlled by (name of licensed association), whether arising from alleged acts or omissions of a licensee and its agents or employees, the condition of the premises of (name of licensed association) or any other cause. Except as provided above, all licensees participating in racing, training**,** and related activities at (name of licensed association) shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. **[**~~Section 37. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, ASTM.~~

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

~~(3) This material may also be obtained from the Kentucky Horse Racing Commission Web site at www.khrc.ky.gov.~~**]**

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

APPROVED BY AGENCY: June 8, 2010

FILED WITH LRC: June 15, 2010 at 11 a.m.

CONTACT PERSON: Susan Bryson Speckert, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

CABINET FOR PUBLIC PROTECTION
Department of Housing, Buildings and Construction
Division of Building Code Enforcement
(As Amended at ARRS, October 12, 2010)

815 KAR 7:110. Criteria for expanded local jurisdiction.

RELATES TO: KRS **67A, 67C, 82.105(1), 83, 83A, 198B.040(7), 198B.050, 198B.060, 198B.070, 212.626(5), 236.318[**~~198B.040(7), 198B.050, 198B.060, 198B.070~~**]**

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(5), (6), (18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.060(5) and (6) authorizes a local government to petition the commissioner[~~executive director~~] to request additional plan review and inspection functions to be allocated to that local government. This administrative regulation establishes the requirements for local building departments to request and be granted expanded building code plan review and inspection jurisdiction and to collect fees for those activities.

Section 1. Definitions. (1) **[**~~"City" means:~~

~~(a) City organized and governed under the mayor-alderman form of government pursuant to KRS Chapter 83;~~

~~(b) City organized and governed under the mayor-council form of government pursuant to KRS Chapter 83A;~~

~~(c) City organized and governed under the commission form of government pursuant to KRS Chapter 83A;~~

~~(d) City organized and governed under the city manager form of government pursuant to KRS Chapter 83A;~~

~~(e) Consolidated local government organized and governed under the consolidated local government form of government pursuant to KRS Chapter 67C; and~~

~~(f) Urban-county government organized and governed under the urban-county form of government pursuant to KRS Chapter 67A.~~

~~(2) "County" means one (1) of 120 political subdivisions of the Commonwealth created and established by the laws of the Commonwealth.~~

~~(3)~~**]** "Local governing body" means the chief governing body of a city, county, consolidated local government, or urban-county **having[**~~which has~~**]** legislative powers.

(2)[~~(4)~~**]** "Local government" means**:**

(a) A city, as established in KRS Chapter 67A, 67C, 83, and 83A;

(b) A county, as defined by KRS 212.626(5);

(c) A consolidated local government; and

(d) An urban-[~~each city, regardless of classification; each county; each consolidated local government; and each urban~~**]**county government.

Section 2.[~~Section 1.~~] Uniform Criteria for Granting Expanded Jurisdiction. To apply[~~petition~~] for expanded jurisdiction pursuant to KRS 198B.060(5), a local government shall comply with the requirements established in this section.

(1) An authorized representative of a local government[~~A local government~~] shall complete the Application for Local Expanded Jurisdiction, Form BCE/EJ #1, and submit it to the department[~~office~~] together with the supporting documentation required by this administrative regulation.

(2) Certified inspectors[~~inspector~~] required.

(a) The local government shall certify that it employs or contracts[~~employ or contract~~] with a person, firm, or company to perform the plan reviews, specifications, and[~~plans and specifications inspection or~~] building inspection functions granted to the local government.

(b) The local government shall employ or execute a legal contract with at least one (1) person certified as a building inspector level III, pursuant to 815 KAR 7:070**. The building inspector level III shall be[**~~and is~~**]** responsible for reviewing plans, reviewing specifications, and performing building inspections.

(c)[~~(a)~~] The local government shall employ or execute a legal contract with a certified electrical inspector to enforce the National Electric Code (NFPA 70) as adopted and incorporated into the Kentucky Building Code (815 KAR 7:120) and Kentucky Residential Code (815 KAR 7:125).[~~and other code enforcement personnel and support staff necessary to enforce the Kentucky Building Code within the expanded jurisdiction.~~

~~(b) The local government shall have at least one (1) person who is a building inspector level III, pursuant to 815 KAR 7:070 reviewing the plans and specifications and performing building inspections. The designated Level III inspector shall have a mini-~~

~~mum of three (3) years experience in that capacity.~~]

(3) Additional personnel. A complete list of code enforcement personnel, including the building inspector level III and certified electrical inspector,[~~that shall be~~] employed or contracted with to enforce the code within the expanded jurisdiction shall be submitted with the application. The list of personnel shall include the name, job title**,** and certification status of each individual.

(4) Construction activity. The local government shall provide documentation of the permits issued and fees collected for the previous calendar year, if any, and an estimation of the anticipated increase in activity if granted expanded jurisdictional authority [~~with the expanded jurisdiction~~].

(5) Local government contracts.

(a) If a local government associates with other local governments to share plan and specifications inspection or building functions pursuant to KRS 198B.060(15), the documentation of permit and fee activity required by subsection (4) of this section shall be provided by the applicant; or

(b) If a local government contracts with a person, firm, or company to provide plan and specification inspections or building inspection functions, and the person, firm, or company, the documentation of permit and fee activity required by subsection (4) of this section shall be provided by the applicant. [~~(5) Contracts with other local governments. If a person, firm, or company has been contracted to provide plans and specifications inspection functions and the person, firm, or company provides inspection services for other local governments, the documentation of permit and fee activity required by subsection (4) of this section shall be provided for each of the other local governments.~~]

(6) Official contact person. The local government shall identify and provide:

(a) The name and title of the chief building code official;

(b) The name of the department;

(c) The official mailing address;

(d) The phone number;

(e) The fax number; and

(f) The e-mail address, if applicable.

(7) Inclusions and exclusions.

(a) Application[~~A local government's petition~~] for expanded jurisdiction pursuant to KRS 198B.060(5) shall include:

1. A[~~complete~~] list of each building occupancy classification and size for which expanded jurisdiction is requested;

2. A[~~complete~~] list of each building occupancy classification and size for which expanded jurisdiction is not requested;**[**~~and~~**]**

3. A copy of the local ordinance requiring single family dwelling plan review and inspection within the jurisdiction**; and[**~~.~~**]**

4. A copy of the schedule of fees as adopted by the local governing body.[~~or a statement to the effect that the local government elects not to regulate them.~~]

(b) The minimum responsibilities required by KRS 198B.060(2) shall be maintained by the local government, unless specifically agreed otherwise in writing between[~~by~~] the local government and the department[~~office~~].

(8) State jurisdiction. The department[~~office~~] shall retain plan review, inspection**,** and enforcement responsibility under the Kentucky Building Code for all buildings **that[**~~which~~**]** are:

(a) Institutional buildings;

(b) Educational buildings**,** unless specifically agreed in writing by the local government and the department;

(c) Licensed facilities as mandated by the Cabinet for Health and Family Services, including day care centers, hospitals**,** and nursing homes;

(d)[~~or other facilities required to be licensed by the Cabinet for Health and Family Services, including day care centers, hospitals, nursing homes or other similar facilities;~~

~~(c)~~] State-owned and state-leased[~~or leased~~] buildings and facilities;

(e)[~~(d)~~] High-hazard occupancies, unless specifically agreed in writing by the local government and the department[~~office~~]; and

(f)[~~(e)~~] Industrialized building systems (including modular homes) except for site placement and assembly of individual modular homes. A local government may permit placement and assembly locally with written notification to the department for each placement.

Section 3.[~~modular homes which may be permitted locally upon notification from the office for each instance.~~

~~Section 2.~~] Procedures for Maintaining Expanded Jurisdiction. (1) The department[~~office~~] shall monitor the program of each local government granted expanded jurisdiction responsibilities. If a[~~local governments that have been granted additional responsibility. If the~~] local government is found to be in violation of the requirements of this administrative regulation, the Kentucky Building Code, the Kentucky Residential Code, the[~~any~~] terms of the applicable expanded jurisdiction agreement, or KRS Chapters 198B, 236**,** or 318, the department may[~~their agreement or KRS Chapter 198B, the office may cancel the agreement, rescind the expanded jurisdiction and~~] preempt the local program in whole or in part,[~~its entirety,~~] upon approval of the board.

(2) Each agreement for expanded jurisdiction shall be in effect for three (3) years, unless[~~canceled~~]:

(a) Canceled by agreement[~~By agreement~~] of the parties in writing; or

(b) Preempted in whole or in part pursuant[~~Pursuant~~] to subsection (1) of this section.

(3) The local government shall notify the department[~~office~~], within thirty (30) days of any changes in personnel or fees during the terms of the agreement[~~contract period~~].

(4) Before the expiration of the three (3) year agreement for expanded jurisdiction, the local jurisdiction shall submit **a Renewable Application for Expanded Jurisdiction[**~~an application for renewal~~**]** on Form BCE/EJ #2. The renewal application shall contain the following:

(a) A list of each building occupancy classification and size for which expanded jurisdiction is requested to continue;

(b) A list of each building occupancy classification and size for which expanded jurisdiction is not requested;

(c) A copy of the local ordinance, if different than submitted with previous application requiring single family dwelling plan review and inspection within the jurisdiction; and

(d) A copy of the current schedule of fee as adopted by the local governing body.

(5)[~~5.~~**]** After receiving and reviewing the local government's application for renewal, the department shall:

(a) Reevaluate the building code enforcement program of the local government; and

(b) Make a recommendation to the board supporting or withholding support for continuation and renewal of the expanded jurisdiction.

(6)[~~6.~~**]** Upon receiving comments from the board, the department shall either renew the local government's expanded jurisdiction or deny the renewal request.

(7)[~~7.~~**]** The minimum responsibilities required by KRS 198B.060(2) shall continue by the local government, or as agreed under the initial application and approval.

(8)[~~8.~~**]** The department shall retain plan review, inspection and enforcement responsibility under the Kentucky Building Code for all buildings as specified in the original agreement for expanded local jurisdiction with the local government.

Section 4.[~~the office shall reevaluate the building code enforcement program of the local government and make a recommendation to the board regarding continuation of the expanded jurisdiction and renewal of the agreement. Upon approval by the board and the local government, the office shall renew its agreement for another three (3) years.~~

~~Section 3.~~] Local Appeals Board. (1) The local government with expanded jurisdiction may establish a local appeals board in accordance with KRS 198B.070.

(2) If the local government establishes a local appeals board, the local government shall send a written notice to the department**,**[~~office~~] which shall:

(a) Identify[~~the names of~~] each member by name and[~~their technical~~] qualifications for being appointed to the appeals board; and

(b) Include contact information for[~~the method for contacting~~] the local appeals board.

(3) If[~~there is not~~] a local appeals board is not established, all costs incurred in processing any appeals filed pursuant to KRS 198B.070(5)[~~the appeal~~] shall be charged to the local government

Section 5.[~~for each appeal filed pursuant to KRS 198B.070(5).~~

~~Section 4.~~] One (1) and Two (2) Family Dwellings. (1) The local building inspection program shall not include the plan review and inspection for[~~of the construction of~~] one (1) and two (2) family dwellings that are:

(a) Manufactured homes;

(b) Modular homes; or

(c) Farm dwellings.

(2) The local building inspection program shall include permits and inspections for the foundation system and other on-site construction related to modular home installations.

[~~Section 5. Local Government Fees Schedule. (1) The local fees authorized by KRS 198B.060(18), established for construction projects which continue under state jurisdiction, shall be adjusted to reflect that plan review or inspection functions will not be provided by the local government.~~

~~(2) Each local government's petition for expanded jurisdiction shall include a copy of the schedule of fees as adopted by the local legislative body.~~]

Section 6. Incorporation by Reference. (1) The following material incorporated by reference:

(a) **"**Application for Local Expanded Jurisdiction**"**, Form BCE/EJ #1, October**[**~~,~~**]** 2007; and

(b) **"**Renewal Application for Expanded Jurisdiction**"**, Form BCE/EJ #2, August**[**~~,~~**]** 2010[~~Form BCE/EJ #1, Application for Local Expanded Jurisdiction, October, 2007, 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, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: August 12, 2010
FILED WITH LRC: August 13, 2010 at 8 a.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.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning Contractors
(As Amended at ARRS, October 12, 2010)

815 KAR 8:035. Reciprocal licensing requirements.

RELATES TO: KRS 198B.664, 198B.666, 198B.668.

STATUTORY AUTHORITY: KRS 198B.654, 198B.666.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 and**[**~~KRS~~**]** 198B.666 **require[**~~requires~~**]** the Board of Heating, Ventilation and Air Conditioning Contractors to establish requirements for reciprocal licensing of HVAC Master Contractors and HVAC Journeymen. This administrative regulation establishes the application process for obtaining a Kentucky HVAC license through reciprocity.

Section 1. An applicant for reciprocity shall:

(1) Comply with the requirements established in the reciprocity agreement between Kentucky and the state in which the applicant is licensed;

(2)(a) Submit the **HVAC Reciprocity Application and the** following application fee:

1. For a Master HVAC Contractor license, a nonrefundable application fee of $250 for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month; or

2. For an HVAC Journeyman license, a non-refundable application fee of fifty (50) dollars for a twelve (12) month license. The initial license fee may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month.

(b) If both licenses are being applied for, an application fee shall be submitted for each license with **each HVAC Reciprocity Application[**~~application~~**]**.

(3) Submit a completed Reciprocity HVAC Application, Form HVAC-30**[**~~, which is incorporated herein by reference as if set out in its entirety~~**]**.

Section 2. Incorporation by Reference. (1)**[**~~Form HVAC-30,~~**]** "HVAC Reciprocity Application", **Form HVAC-30,** August**[**~~,~~**]** 2010, is incorporated by reference.

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

RICHARD MOLONEY, Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: August 12, 2010
FILED WITH LRC: August 13, 2010 at 8 a.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.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning Contractors
(As Amended at October 12, 2010)

815 KAR 8:050. Continuing education requirements for heating, ventilation, and air conditioning (HVAC) license holders.

RELATES TO: KRS 198B.658, 198B, 660, 198B.664, 198B.672, EO 2009-535

STATUTORITY AUTHORITY: KRS 198B.654(1), 198B.684, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1), **requires[**~~authorizes~~**]** the Kentucky Board of Heating, Ventilation, and Air Conditioning to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.684 authorizes the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors to promulgate an administrative regulation with standards for continuing education for licensees and certificate holders. 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 continuing education requirements for HVAC license holders.

Section 1. Master HVAC Contractor Licensees. (1) Each Master HVAC Contractor shall provide proof of completion of at least eight (8) hours of approved continuing education prior to license renewal.

(2) The required continuing education shall be completed by licensee within the twelve (12) months preceding renewal except as provided in subsection **(4) of this section[**~~(3)~~**]**.

(3) Continuing education courses shall relate to one (1) or more of the following:

(a) Business;
(b) Job safety;
(c) Codes relating to HVAC; and
(d) Board- or board designee-approved subjects directly relating to the HVAC.

(4) A licensed master HVAC contractor **who[**~~that~~**]** accumulates more than the eight (8) hours of continuing education required annually, may carry forward the excess credit hours into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those two (2) years.

(a) Carry forward credits **shall be[**~~are~~**]** limited to a total of twelve (12) hours.

(b) All excess credits above the total of twelve (12) hours **shall[**~~will~~**]** remain on the licensed master HVAC contractor's records but shall not be carried forward.

(5) A licensed master HVAC contractor teaching or participating as a panel member in an approved continuing education course for heating, ventilation or air conditioning shall be granted one (1) credit hour for each fifty (50) minutes of actual instruction time.

Section 2. Journeyman HVAC Licensees. (1) Each journeyman shall provide proof of completion of at least eight (8) hours of approved continuing education prior to license renewal except as provided in subsection (5) **of this section**.

(2) The required continuing education shall be completed by licensee within the twelve (12) months preceding renewal.

(3) Continuing education courses shall relate to one (1) or more of the following:
(a) Business;
(b) Job safety;
(c) Codes relating to HVAC; and
(d) Board- or board designee-approved subjects directly relating to the HVAC trade.

(4) A maximum of four (4) hours of continuing education relating to job safety shall be allowed towards annual journeyman license renewal.

(5) A licensed HVAC journeyman **who[**~~that~~**]** accumulates more than the eight (8) hours of continuing education required annually, may carry forward the excess credit hours into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those two (2) years.

(a) Carry forward credits **shall be[**~~are~~**]** limited to a total of twelve (12) hours.

(b) All excess credits above the total of twelve (12) hours **shall[**~~will~~**]** remain on the licensed HVAC journeyman's records but shall not be carried forward.

(6) A licensed HVAC journeyman teaching or participating as a panel member in an approved continuing education course for HVAC shall be granted one (1) credit hour for each fifty (50) minutes of actual instruction time.

Section 3. Combined Master and Journeyman Licensees. An individual who is a holder of both a master and a journeyman license shall meet the continuing education requirements of Section 1 of this administrative regulation.

Section 4. Inactive Master HVAC Contractor Licensees. (1) An inactive HVAC Contractor shall not be required to complete continuing education to maintain inactive status.

(2) If an inactive HVAC Contractor wishes to activate his or her license to the status of an active HVAC Contractor, he or she shall complete four (4) hours of current safety standards continuing education and four (4) hours of current mechanical code continuing education.

(3) Proof of completion of continuing education requirements shall be submitted to the department prior to license reactivation.

Section 5. Continuing Education Courses. (1) All continuing education required for master and journeyman license holders shall be completed in courses approved by the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors or its designee pursuant to 815 KAR 8:060.

(2) Continuing education courses shall be offered only by providers approved by the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors or its designee pursuant to 815 KAR 8:060.

(3) Continuing Education Courses shall be a minimum of two (2) hours. One (1) hour of class shall be equivalent to fifty (50) minutes of classroom instruction.

(4) Continuing education courses offered by a provider not approved in accordance with 815 KAR 8:060 shall be approved by the board or its designee if the following are met:

(a) Approval is requested by the individual license holder thirty (30) days in advance of course date;

(b) A detailed syllabus of the course is provided with the request; and

(c) The course is **[**~~determined by the board or its designee to be~~**]** beneficial to the licensee in the HVAC trade.

(5) The board or its designee shall approve a request if the information has been submitted in accordance with subsection (4) of this section of this administrative regulation. The license holder shall provide an affidavit from the instructor verifying the hours of attendance.

RICHARD MOLONEY, Chairman
ROBERT D. VANCE, Secretary
APPROVED BY AGENCY: August 12, 2010
FILED WITH LRC: August 13, 2010 at 8 a.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.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, October 12, 2010)

815 KAR 20:032. Continuing education requirements for plumbers.

RELATES TO: KRS 318.054, **[**~~KRS~~**]**318.130
STATUTORY AUTHORITY: KRS 318.054, **[**~~KRS~~**]**318.130
NECESSITY, FUNCTION, AND CONFORMITY: **[**~~The department~~**]**[office]**[**~~is directed by~~**]**KRS 318.130 **authorizes the department** to adopt and put into effect a State Plumbing Code. KRS 318.054 authorizes the department[~~office~~], after review by the State Plumbing Code Committee, to adopt continuing education requirements for plumbers. This administrative regulation establishes those requirements.

Section 1. Master Plumbers. (1) Each master plumber shall provide proof of completion of eight (8) hours of continuing education prior to license renewal. The required continuing education shall be received within twelve (12) months prior to renewal **except as provided in subsection (3) of this section**.

(2) Continuing education courses shall relate to one (1) or more of the following:
(a) Business;
(b) Job safety;
(c) The Kentucky state plumbing code; or
(d) Items directly related to the plumbing trade.

(3) A licensed master plumber **who[**~~that~~**]** accumulates more than the eight (8) hours of continuing education required annually, may carry forward the excess credit hours into the two (2) successive educational years for the purpose of satisfying the minimum requirement for those two (2) years.

(a) Carry forward credits **shall be[**~~are~~**]** limited to a total of twelve (12) hours.

(b) All excess credits above the total of twelve (12) hours **shall[**~~will~~**]** remain on the licensed master plumber's records but shall not be carried forward.

(4) A licensed master plumber teaching or participating as a panel member in an approved continuing education course for plumbing shall be granted one (1) credit hour for each fifty (50) minutes of actual instruction time.

Section 2. Journeyman Plumbers. (1) Each journeyman plumber shall provide proof of completion of eight (8) hours of continuing education prior to license renewal. The required continuing education shall be received within twelve (12) months prior to renewal **except as provided in subsection (3) of this section**.

(2) Continuing education courses shall consist of a minimum of two (2) hours on job safety. The other six (6) hours shall consist of:

(a) The Kentucky state plumbing code;

(b) Job safety; or

(c) Items directly related to the plumbing trade.

(3) A licensed journeyman plumber **who[**~~that~~**]** accumulates more than the eight (8) hours of continuing education required annually, may carry forward the excess credit hours into the two **(2)** successive educational years for the purpose of satisfying the minimum requirement for those two **(2)** years.

(a) Carry forward credits **shall be[**~~are~~**]** limited to a total of twelve (12) hours.

(b) All excess credits above the total of twelve (12) hours **shall[**~~will~~**]** remain on the licensed journeyman plumber's records but shall not be carried forward.

(4) A licensed journeyman plumber teaching or participating as a panel member in an approved continuing education course for plumbing shall be granted one credit hour for each fifty (50) minutes of actual instruction time.

Section 3. Combined Master and Journeyman Licenses. An individual **who[**~~which~~**]** is a holder of both a master and a journeyman license shall meet the continuing education requirements of Section 1 of this administrative regulation.

Section 4. Inactive Master Licenses. (1) An inactive master plumber shall not required to complete continuing education to maintain inactive status.

(2) If the inactive licensed plumber wishes to activate his or her license to the status of an active master plumber, he or she shall meet the requirements of Section 1 of this administrative regulation.

(3) Any excess continuing education credit hours that a master plumber may be carrying forward shall not count towards continuing education requirements for re-activation of an inactive license.

Section 5. Delinquent Licenses. (1) Except as provided in subsection (2) of this **section[**~~subsection~~**]** prior to reinstatement, an individual whose master or journeyman license is delinquent shall complete the total number of continuing education hours per year that the license has been delinquent.

(2)The number of hours necessary for reinstatement shall not exceed forty (40) hours.

Section 6. Continuing Education Courses. (1) All continuing education shall be completed in one **(1)** or more courses approved by the department[~~office~~] and the Kentucky state plumbing code committee for master and journeyman plumbers pursuant to 815 KAR 20:034.

(2) Continuing education courses shall be offered only by providers approved by the department[~~Office~~] and the Kentucky State Plumbing Code Committee pursuant to 815 KAR 20:034.

RICHARD MOLONEY, Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: August 12, 2010

FILED WITH LRC: August 13, 2010 at 8 a.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 Community Based Services
Division of Family Support
(As Amended at ARRS, October 12, 2010)

921 KAR 2:040. Procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.010, 205.200, 205.245, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

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 Chapter 205 requires the Cabinet for Health and Family Services to administer the following public assistance programs: Kentucky Transitional Assistance Program (K-TAP)[~~or "K-TAP"~~] and State Supplementation Program (SSP)[~~or "SSP"~~]. KRS 205.200(2) requires the cabinet to prescribe, by administrative regulation, the conditions of eligibility for public assistance, in conformity with Title IV-A of the Social Security Act, 42 U.S.C. 601-619 and federal regulations. This administrative regulation establishes the procedures used to determine initial and continuing eligibility for assistance under these programs.

Section 1. Eligibility Determination Process. (1) A household shall, for the month payment is intended to cover the household, meet the eligibility criteria in:

(a) 921 KAR 2:006 and 921 KAR 2:016 for K-TAP; or

(b) 921 KAR 2:015 for SSP.

(2) A household shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

(3) Each decision regarding eligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record.

(4) The applicant or recipient shall be the primary source of information and shall be required to:

(a) Furnish verification of:

1. Income;

2. Resources; and

3. Technical eligibility; and

(b) Give written consent to contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(5) If informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information **when [**~~at the time~~**]** requested shall be considered a failure to present adequate proof of eligibility.

(6)(a) An application shall be considered filed if a PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance), or a KIM-100, KAMES Application, containing the name, address, and signature of the applicant is received by a DCBS office.

(b) An application shall be processed after the:

1. Applicant or representative is interviewed;

2. Required information and verification for the application is provided to the **Department for Community Based Services (**DCBS**)** office; and

3. Application and related documents are received by the DCBS office.

(c)[~~An applicant shall comply with the application requirements to determine initial eligibility for K-TAP or SSP as established in 921 KAR 3:030.~~

~~(b)~~] If an electronic form is not used, the cabinet shall record information for recertification to determine continuing eligibility for K-TAP[~~as established in 921 KAR 3:030, or~~] by using form[~~Form, "~~]PR-1, Program Recertification[~~"~~].

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting, within ten (10) calendar days, any change in circumstances which may affect eligibility or the amount of pay-

ment.

(2) Eligibility shall be redetermined:

(a) If a report is received or information is obtained about changes in circumstances;

(b) Every twenty-four (24) months for SSP cases [~~in which Supplemental Security Income or "SSI" is not received~~]; and

(c) Every twelve (12) months for K-TAP cases.

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

(a) "KIM-100, KAMES Application", edition 8/10;

(b) "PA-77, Intent to Apply for Medicaid and/or K-TAP (Cash Assistance)", edition 8/10; and

(c) "PR-1, Program Recertification", edition 1/03[~~", 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 R. WILSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: July 6, 2010

FILED WITH LRC: July 23, 2010 at 4 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502)-564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amended After Comments)

201 KAR 20:056. Advanced practice registered nurse licensure[practitioner registration], program requirements, recognition of a national certifying organization.

RELATES TO: KRS 314.011(8), 314.042, 314.091, 314.161, 314.470

STATUTORY AUTHORITY: KRS 314.042(7), 314.131(1), 314.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure[registration] of an advanced practice registered nurse [practitioner]. This administrative regulation establishes the requirements for licensure[registration], renewal, and reinstatement, programs, and recognition of a national certifying organization.

Section 1. An applicant for licensure[registration] as an advanced practice registered nurse [practitioner] in Kentucky shall:

(1) Complete an "Application for Licensure[Registration] as an Advanced Practice Registered Nurse[Practitioner]" as required by 201 KAR 20:370, Section 1(1);

(2) Provide a copy of a current active Registered Nurse license or validation of Registered Nurse licensure if the state of licensure does not issue licensure cards;

(3) Submit the fee required by 201 KAR 20:240, Section 1(2)(k); and

(4) Comply with the requirements established in KRS 314.042 and Sections 2 and 4 through 10 of this administrative regulation.

(5) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also provide:

(a) A completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) A certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) A letter of explanation that addresses each conviction, if applicable.

Section 2. Postbasic Program of Study and Clinical Experience. (1) An organized postbasic program of study and clinical experience shall conform to the following criteria in order to be acceptable to the board. The program shall:

(a) Be an established, ongoing, and organized program offered on a routine basis to an enrollee;

(b)1. Be accredited or approved for the education of nurses by a recognized accreditation or approval body; or

2. Be sponsored by a sponsoring organization, which shall hold the accreditation or approval for the education of nurses by a recognized accreditation or approval body;

(c) Have a program design which prepares an enrollee to function in a role consistent with the advanced practice registered nursing [practice] designation;

(d) Have a program design which includes purpose, philosophy, objectives, curriculum content, and plan to evaluate achievement of objectives and measurement of learning outcomes of students;

(e) Have a designated faculty responsible for planning, development, implementation, and evaluation of curriculum and students;

(f) Include didactic components that prepare the student to perform the additional acts delineated by the board pursuant to KRS 314.011(8) and include at least pharmacology, advanced physical assessment, advanced pathophysiology, and medical management of disease and differential diagnosis;

(g) Include a supervised clinical experience that includes application of all the didactic components; and

(h) Upon successful completion, award a diploma or certificate.

(2)(a) If the applicant for licensure[registration] as an advanced practice registered nurse [practitioner] completed a postbasic program of study after January 1, 2005, the applicant shall hold a master's degree, or doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse [practitioner] designation.

(b) If the applicant for licensure[registration] as an advanced practice registered nurse [practitioner] completed a postbasic program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to determine if the program is acceptable to the board by sufficiently preparing a student for advanced practice registered nursing [practice].

Section 3. National Certifying Organizations. (1) A nationally established organization or agency which certifies registered nurses for advanced practice registered nursing [practice] shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

(b) Eligibility requirements for certification are delineated;

(c) Certification is offered in specialty areas of clinical practice consistent with the population focus required by and defined by KRS 314.011;

(d) Scope and standards of practice statements are promulgated;

(e) Mechanism for determining continuing competency is established; and

(f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.

(2) The board recognizes the following national certifying organizations:

(a) American Nurses Credentialing Center **[**~~except as limited by subsection (3)(a) of this section~~**]**;

(b) American College of Nurse Midwives;

(c) ACNM Certification Council;

(d) Council on Certification/Recertification of Nurse Anesthetists;

(e) Pediatric Nursing Certification Board;

(f) National Certification Corporation; and

(g) American Academy of Nurse Practitioners[~~;~~

~~(h) American Association of Critical-Care Nurses Certification Association; and~~

~~(i) Oncology Nursing Certification Corporation~~].

(3) **The following certification examinations for nurse practitioners (NP) and clinical nurse specialists (CNS) offered by the national certifying organizations identified in subsection 2 of this section shall be deemed to meet the definition of population focus of KRS 314.011(21):**

(a) Acute Care NP;
(b) Adult NP;
(c) Adult Psychiatric and Mental Health NP;
(d) Family NP;
(e) Family Psychiatric and Mental Health NP;
(f) Gerontological NP;
(g) Neonatal NP;
(h) Pediatric NP;
(i) Pediatric/Primary Care NP;
(j) Pediatric/Acute Care NP;
(k) Women's Health NP;
(l) Adult Health CNS;
(m) Adult Psychiatric and Mental Health CNS;
(n) Child and Adolescent Psychiatric and Mental Health CNS;

(o) Gerontological CNS; and

(p) Pediatric CNS.

(4) The board recognizes the following national certifying organizations only for those individuals who received certification prior to the effective date of this administrative regulation and who have continually renewed their Kentucky advanced practice registered nurse license since that date:

(a) American Association of Critical Care Nurses Certification Corporation; and

(b) Oncology Nursing Certification Corporation. [~~The board recognizes the following national certifying organizations only for those individuals who received certification prior to July 15, 2010 and who have continually renewed their advanced practice registered nurse license since that date or who were enrolled in a program leading to certification prior to October 1, 2010 and after becoming licensed have continually renewed their advanced practice registered nurse license:~~

~~(a) American Nurses Credentialing Center's Acute Care Nurse Practitioner certification;~~

~~(b) American Association of Critical Care Nurses Certification Association; and~~

~~(c) Oncology Nursing Certification Corporation.~~**]**

Section 4. Practice Pending Licensure[~~Registration~~]. (1) [~~An applicant who meets all the requirements for practice as an advanced registered nurse practitioner except for initial certification by a national certifying organization shall be authorized to practice as an advanced registered nurse practitioner subject to the following conditions:~~

~~(a) The applicant shall apply for certification from a recognized national certifying organization for the first time.~~

~~(b) The applicant shall obtain an advanced registered nurse practitioner in the same specialty, or a licensed physician, to supervise the applicant. For the purposes of this paragraph:~~

~~1. Supervision shall include, at a minimum, periodic observation and evaluation of the applicant's practice to validate that the practice has been performed according to established standards; and~~

~~2. The supervisor shall be immediately available either on site or by telephone.~~

~~(c) The applicant shall verify to the board that he has applied for certification and has obtained a supervisor.~~

~~(d) Practice pursuant to this subsection shall extend until the applicant has learned the results of the request for certification.~~

~~(e) An applicant who has previously applied for and been denied certification by a recognized national certifying organization shall be ineligible to practice as an advanced registered nurse practitioner until he has been certified.~~

~~(2)~~] A registered nurse who meets all the requirements for practice as an advanced practice registered nurse [~~practitioner~~], and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement, shall be authorized to practice as an advanced practice registered nurse [~~practitioner~~] for a period of time not to exceed the expiration date of the temporary work permit.

(2)[~~(3)~~] Authorization to practice pursuant to **[**~~subsections (1) or (2) of~~**]** this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.

(3)[~~(4)~~] An individual authorized to practice pursuant to subsection (1) of this section may use the title "APRN[~~ARNP~~] Applicant" or "APRN[~~ARNP~~] App.".

Section 5. License[~~Registration~~] Renewal. (1) The advanced practice registered nurse license[~~practitioner registration~~] shall expire or lapse when the registered nurse license or privilege expires or lapses.

(2) To be eligible for renewal of the license[~~registration~~] as an advanced practice registered nurse [~~practitioner~~], the applicant shall:

(a) Renew the registered nurse license or privilege on an active status;

(b) Submit a completed "ARPN License[~~ARNP Registration~~] Renewal Application" form as required by 201 KAR 20:370, Section 1(1);

(c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(l); and

(d) Maintain current certification by a recognized national certifying organization.

(3) An advanced practice registered nurse [~~practitioner~~] who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse [~~practitioner~~] until:

(a) A current active license has been issued by the board or a privilege is recognized by the board; and

(b) The advanced practice registered nurse license[~~practitioner registration~~] has been reinstated.

(4) An advanced practice registered nurse [~~practitioner~~] shall provide evidence of current certification by a recognized national certifying organization upon recertification and at the request of the board.

Section 6. License[~~Registration~~] Reinstatement. (1) If a nurse fails to renew the advanced practice registered nurse license[~~practitioner registration~~] as prescribed by KRS 314.042 and this[~~applicable law and~~] administrative regulation, the license[~~registration~~] shall lapse on the last day of the licensure period.

(2) To be eligible for reinstatement of the advanced practice registered nurse license[~~practitioner registration~~], the applicant shall:

(a) Submit a completed "Application for Licensure[~~Registration~~] as an Advanced Practice Registered Nurse[~~Practitioner~~]" form as required by 201 KAR 20:370, Section 1(1);

(b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(m); and

(c) Maintain current certification by a recognized national certifying organization.

(3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also provide a:

(a) Completed Federal Bureau of Investigation (FBI) Applicant Fingerprint Card and the fee required by the FBI that is within six (6) months of the date of the application;

(b) Report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System that is within six (6) months of the date of the application;

(c) Certified copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(d) Letter of explanation that addresses each conviction, if applicable.

Section 7. Certification or Recertification. (1)(a) An advanced practice registered nurse [~~practitioner~~] shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure[~~registration~~] period.

(b) The board shall conduct an audit to verify that an advanced practice registered nurse [~~practitioner~~] has met the requirements of subsection (1)(a) of this section.

(2) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse [~~practitioner~~] until the requirements of Sections 1 through 8 of this administrative regulation have been met.

(3) An advanced practice registered nurse [~~practitioner~~] who is decertified by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse [~~practitioner~~] during the period of decertification.

Section 8. (1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant

shall be required to reapply.

Section 9. The requirements of Sections 1 through 11 of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) A postbasic educational program for preparation for advanced practice registered nursing [~~practice~~]; or

(2) An advanced practice registered nurse [~~practitioner~~] refresher course.

Section 10. A registered nurse who holds himself out as a clinical specialist or is known as a clinical specialist shall be required to be licensed[~~register~~] as an advanced practice registered nurse [~~practitioner~~] if his practice includes the performance of advanced practice registered nursing procedures.

Section 11. A nurse practicing as an advanced practice registered nurse [~~practitioner~~] who is not licensed[~~registered~~] as an advanced practice registered nurse [~~practitioner~~] by the board, an advanced practice registered nurse [~~practitioner~~] whose practice is inconsistent with the specialty to which he has been designated, or an advanced practice registered nurse [~~practitioner~~] who does not recertify and continues to practice as an advanced practice registered nurse [~~practitioner~~] shall be subject to the disciplinary procedures set in KRS 314.091.

JIMMY ISENBERG, President

APPROVED BY AGENCY: September 16, 2010

FILED WITH LRC: September 28, 2010 at noon

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets requirements for advanced registered nurse practitioner regulation, requirements for ARNP programs, and recognition of national certifying organizations for ARNPs.

(b) The necessity of this administrative regulation: The board is required by statute to set these requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting 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: It changes the title "Advanced Registered Nurse Practitioner" to "Advanced Practice Registered Nurse"; changes registration to licensure; and recognizes that certification must be in a population focus.

(b) The necessity of the amendment to this administrative regulation: It is necessary to implement HB 179.

(c) How the amendment conforms to the content of the authorizing statutes: By implementing HB 179.

(d) How the amendment will assist in the effective administration of the statutes: By implementing HB 179.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All present and future APRNs. Currently, there are approximately 3,800.

(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: Current APRNs will not need to take any action other than to change their titles. Future APRNs will have to conform to the new requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: It is impossible to estimate the cost to the agency to implement the changes.

(b) On a continuing basis: Unknown

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

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

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

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

Revenues (+/-):

Expenditures (+/-): There will be additional staff time needed to implement this new legislation.

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amended After Comments)

201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.111, 314.131.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(3) and 314.131(2) require the board to approve schools of nursing and courses preparing persons for Advanced Practice Registered Nurse (APRN) licensure and to monitor standards for

APRN competency under KRS Chapter 314. This administrative regulation establishes APRN programs of nursing standards.

Section 1. Definitions. (1) "Advanced Practice Registered Nurse program of nursing" means the educational unit that prepares a person for practice and licensure as an advanced practice registered nurse and includes secondary or distance learning sites, if applicable.

(2) "APRN program coordinator" means that individual who is responsible for the organization of the educational component and is licensed as an APRN in the designated role.

(3) "Designated **chief** nursing **academic officer[**~~unit administrator~~**]**" means that individual who has **academic and** administrative authority for the **overall** nursing **program [**~~unit~~**]**.

(4) "National nursing accrediting body" means National League for Nursing Accreditation Commission (NLNAC) or the Commission for Collegiate Nursing Education (CCNE).

Section 2. Requirements for Advanced Practice Registered Nursing Programs. (1) An educational institution that offers an advanced practice registered nursing program shall ensure that the program:

(a) Is offered by or affiliated with a college or university that is accredited under 201 KAR 20:260, Section 2(1);

(b) Is a formal educational program, that is part of a doctoral, masters program, or a post-masters program in nursing with a concentration in an advanced practice registered nursing and population foci as required for licensure in KRS 314.011;

(c) Has presented evidence that it has applied for nursing program accreditation and meets accreditation standards; and

(d) Offers a curriculum that covers the scope of practice for both the category of advanced practice registered nurse as specified in KRS 314.011 and the population foci.

(2) The clinical practice component of the curriculum shall be congruent with current national professional organizations and nursing accrediting body standards applicable to the APRN role and population focus;

(3) The program shall notify the board of any changes in hours of clinical practice or accreditation status and respond to board requests for information.

(4) The program shall have financial resources sufficient to support the educational goals of the program.

(5) The program shall establish academic and professional standards that determine admission to the program, progression in the program, and graduation from the program that are consistent with sound educational guidelines and recognized standards of professional conduct.

(6) The program shall notify the board regarding any plans to expand the program to additional locations or increase the student enrollment by more than fifty (50) percent from the previously admitted cohort.

(7) Voluntary closure of a program shall be in accordance with 201 KAR 20:360, Section 5.

Section 3. Currently Existing APRN Programs of Nursing. (1) APRN programs of nursing in existence as of July 15, 2010, shall seek approval from the board prior to July 15, 2011. The following materials shall be submitted along with the fee identified in 201 KAR 20:240:

(a) Details regarding each program presently enrolling students, to include: name of institution, address, contact information for designated **chief nursing academic officer [**~~head of the nursing unit~~], degree offered, designated clinical tracks;

(b) A copy of the most recent self-study submitted for the most recent accreditation/re-accreditation by a national nursing accrediting body; and

(c) Copies of all communication between the program and the national nursing accrediting body since the time of the site visit.

(2) The program shall meet all requirements established for curriculum, organizational structure, faculty and students as identified in this administrative regulation.

(3) Following submission of the materials, the application shall be placed on the next education committee agenda.

(4) The designated **chief nursing academic officer [**~~nursing unit administrator~~**]**, along with the APRN program coordinator, shall be available during the discussion of the report at the education committee to provide clarification. The committee shall make a recommendation to the board.

(5) The decision to grant full approval by the board shall be based on review of the following:

(a) Achievement and continued approval by a national nursing accrediting body; and

(b) Adherence to all requirements of this administrative regulation.

(6) The approval period shall not exceed the approval period of the national nursing accrediting body.

(7) An educational institution that is denied approval of an advanced practice registered nursing program shall meet with representatives of the board to determine actions needed; following this meeting, the program may request a hearing pursuant to KRS Chapter 13B by filing a written request with the board within thirty (30) days of service of the board's order denying its application for approval.

Section 4. Establishing a New APRN Program of Nursing. (1) The governing institution may receive consultation from the board prior to establishing an APRN program of nursing.

(2) The governing institution that desires to establish and conduct an APRN program of nursing shall be accredited as outlined in 201 KAR 20:260, Section 1.

(3) The governing institution shall submit an application to establish an APRN program of nursing along with the fee required by 201 KAR 20:240.

(4) At the time that the application is submitted to the board, the program shall also begin the application process with a national nursing accrediting body.

(5) The application shall be submitted to the board no less than twelve (12) months prior to the first intended admission of students.

(6) The application shall be completed under the direction of the registered nurse who shall serve as the designated **chief nursing academic officer [**~~nursing unit administrator~~**]** or the APRN program coordinator and who meets the qualifications of an APRN program coordinator as outlined in this administrative regulation.

(7) The program shall not advertise or enroll students until such time that the board has granted developmental approval status.

(8) The application shall include:

(a) General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, institutional faculty qualifications, and resources that are sufficient to support defined outcomes and goals;

(b) Organizational chart of the governing institution and written plan which describes the organization of the program of nursing and its relationship to the institution;

(c) Designation of the current or desired national nursing accrediting body used in the development of the program;

(d) Description and rationale for the proposed type of APRN program to include the certificate or degree to be awarded and the population foci;

(e) Approval from the governing body of the institution proposing the APRN program of nursing or other empowered approval bodies as applicable;

(f) A copy of the curriculum vitae of the registered nurse identified as the APRN Program coordinator;

(g) Results of a needs assessment, including availability of an adequate number of potential students and employment opportunities for program graduates;

(h) Evidence of support from the community of interest;

(i) A timeline for the admission of students, projected graduation of the first class, and any plans for expansion;

(j) Description of physical or virtual resources adequate to meet the needs of the faculty and students;

(k) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the proposed program of nursing;

(l) Philosophy of the APRN program and program outcomes for graduates;

(m) Curriculum design for each identified track and population foci as defined in KRS 314.011 to include proposed course sequence, description of courses, credit hours delineating those credits assigned to theory and clinical;

(n) Availability of clinical experiences sufficient to accommodate the number of students to include total number of clinical hours designated for each track or population foci;

(o) A five (5) year plan for recruiting and retaining qualified nurse faculty; and

(p) Recruitment plan and five (5) year projection for student enrollment and policies and procedures for student selection and progression.

(9) Developmental approval shall be the designation granted to an APRN program of nursing that has met all the requirements of this administrative regulation including evidence that it has applied for accreditation from a national nursing accrediting body. This designation will be for no more than a two (2) year period of time pending review and approval by a national nursing accrediting body.

(10) When developmental approval has been granted by the board, the program may proceed with implementation including the admission of students. It shall be the responsibility of the APRN program of nursing to notify the board of the admission and graduation of the first class.

(11) Developmental approval of an APRN program shall expire eighteen (18) months from the date of approval if a class of students is not admitted.

(12) All formal communication between the APRN program of nursing and the national nursing accrediting body shall be forwarded to the board within thirty (30) days of receipt.

(13) The APRN program coordinator shall notify the board within five (5) business days of any change in accreditation status.

(14) The APRN program coordinator shall notify the board of pending visits by the national nursing accrediting body and a representative of the board shall arrange a joint site visit with the national nursing accrediting body representative to evaluate on-site materials included in the program proposal. Prior to the site visit, the program of nursing shall submit requested materials that provide evidence of program compliance with the standards established by the state and the national nursing accrediting body.

(15) Following the site visit, a report shall be prepared and shared with the APRN program coordinator for review and correction of factual data. The representatives' site visit report shall not be construed as affirming that the proposed program plan meets requirements.

(16) The governing institution shall be notified in writing of action taken by the board on the site visit report.

(17) The decision to grant full approval by the board shall be based on review of the following:

(a) Achievement and continued full approval by a national nursing accrediting body; and

(b) Site visit reports by the board representative conducted to evaluate program compliance with administrative regulations.

(18) The board may grant full approval for a period of time not to exceed the approval period of the national nursing accrediting body.

Section 5. Administrative Structure of Program. (1) The designated **chief nursing academic officer** **[**~~nursing unit administrator~~**]** shall hold the following qualifications:

(a) A current, active, unencumbered registered nurse license or privilege to practice in Kentucky;

(b) A doctoral degree earned from a university accredited by the United States Department of Education;

(c) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two (2) years of clinical experience; and

(d) Current knowledge of APRN practice

(2) The qualifications for the APRN program coordinator shall include:

(a) A current, active, unencumbered APRN license or privilege to practice in Kentucky;

(b) A minimum of a masters degree in nursing **or health-related field in the clinical specialty** from an accredited college or university **which accreditation is recognized by the U.S. Department of Education**; and

(c) Educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two (2) years of clinical experience.

(3) The board shall be notified in writing of a vacancy or pending vacancy in the position of the APRN program coordinator within fifteen (15) days of the program of nursing's awareness of the vacancy or pending vacancy. If the APRN program coordinator vacates the position, the nursing unit administrator shall submit to the board in writing:

(a) The effective date of the vacancy;

(b) The name of the APRN who has been designated to assume the administrative duties for the program and a copy of his or her curriculum vitae; and

(c) Status reports from the APRN program of nursing national nursing accrediting body.

(4) If there is to be a lapse between the date of the vacancy and the date the newly-appointed APRN program coordinator assumes duties, the designated nursing unit administrator or the head of the governing institution shall submit a plan of transition to insure the continuity of the program;

(5) Progress reports shall be submitted if requested by the board;

(6) The length of the appointment of an interim APRN program coordinator shall not exceed six (6) months.

(7) Additional six (6) month periods may be granted upon request to the board based on a documented inability to fill the position.

(8) If the individual to be appointed as the interim APRN program coordinator is not qualified pursuant to the APRN program of nursing national nursing accrediting body's standards, the designated nursing unit administrator shall petition the board for a waiver prior to the appointment.

Section 6. Faculty, Adjuncts, and Clinical Preceptors. (1) The qualifications for nursing faculty within the program leading to licensure as an APRN shall be as follows:

(a) A current, active, unencumbered APRN license to practice in Kentucky;

(b) A minimum of a master's degree in nursing or health related field in the clinical specialty;

(c) Two (2) years of APRN clinical experience; and

(d) Current knowledge, competence and certification as an APRN in the role and population foci consistent with teaching responsibilities.

(2) Adjunct clinical faculty employed solely to supervise clinical nursing experiences of students shall meet all the faculty qualifications for the program level they are teaching as designated in subsection (1) of this section.

(3) Other qualified individuals may teach a non-clinical course or assist in teaching a clinical course in an advanced practice registered nursing program within their area of expertise.

(4) Clinical preceptors may be used to enhance faculty-directed clinical learning experiences. Clinical preceptors shall have demonstrated competencies related to the area of assigned clinical teaching responsibilities and will serve as a role model and educator to the student. Clinical preceptors shall be approved by faculty and meet the following requirements:

(a) Holds an unencumbered active license or multistate privilege to practice as a registered nurse and advanced practice registered nurse or a physician in the state in which the preceptor practices or, if employed by the federal government, holds an unencumbered active registered nurse and advanced practice registered nurse or physician license in the United States; and

(b) Has a minimum of one (1) year full time clinical experience in current practice as a physician or as an APRN within the role and population focus.

(5) A clinical preceptor shall function as a supervisor and teacher and evaluate the student's performance in the clinical setting. The program faculty shall retain ultimate responsibility for student learning and evaluation.

(6) The preceptor may be a practicing physician or other licensed, graduate-prepared health care provider with comparable practice focus though they cannot consist of a majority of the preceptors.

(7) A clinical preceptor who is an APRN shall hold:

(a) National certification in the advanced practice category in which the student is enrolled; or

(b) Current board licensure in the advanced practice category in which the student is enrolled.

(8) If a preceptor cannot be found who meets the requirements, educational and experiential qualifications as determined by the nursing program, the Board of Nursing shall be notified and a waiver requested.

(9) A complete list of faculty members, clinical faculty, adjuncts, and preceptor appointments shall be reported to the board in writing annually.

Section 7. Curriculum. (1) An education program offered by an accredited college or university that offers a graduate degree or post-masters certificate with a concentration in the APRN role and at least one population foci shall include the following components:

(a) Clinical supervision congruent with current national professional organizations and the national nursing accrediting body standards applicable to the APRN role and population focus;

(b) Curriculum that is congruent with national standards for graduate level and APRN education, is consistent with nationally recognized APRN roles and population foci, and includes, but is not limited to graduate APRN program core courses;

(c) Preparation in the core competencies for the identified APRN role;

(d) Coursework focusing on the APRN role and population foci. The curriculum shall be consistent with competencies of the specific areas of practice.

(3) APRN programs preparing for two (2) population foci or combined nurse practitioner/clinical nurse specialist shall include content and clinical experience in both functional roles and population foci.

(4) Each instructional track shall have a minimum of 500 supervised clinical hours directly related to the role and population foci, including pharmacotherapeutic management of patients.

(5) The curriculum shall contain the following three (3) separate graduate level courses in addition to APRN core courses:

(a) Advanced physiology/pathophysiology, including general principles that apply across the lifespan;

(b) Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches; and

(c) Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad categories of agents.

(6) Content specific to the role and population focus in the APRN core area shall be integrated throughout the other role and population didactic and clinical courses.

(7) The curriculum shall include:

(a) diagnosis and management of diseases across practice settings including diseases representative of all systems and caused by major morbidities;

(b) preparation that provides a basic understanding of the principles for decision making in the identified role; and

(c) role preparation in one of the six population foci of practice identified in 201 KAR 20:056.

(8) Preparation in a specialty area of practice is optional, but if included, must build on the APRN role/population-focus competencies. Clinical and didactic coursework must be comprehensive and sufficient to prepare the graduate to practice in the APRN role and population focus.

Section 8. Students. (1) A student entering into the APRN program shall have an active, unencumbered registered nurse license.

(2) A student who wishes to complete a clinical experience in this state but is enrolled in an out of state APRN program pursuant to Section 11 of this administrative regulation shall have an active, unencumbered RN license in another jurisdiction, either in the U.S. or in another country; as long as the following criteria are met:

(a) The APRN program of nursing is accredited by a national nursing accrediting body;

(b) The graduate program advises the student of expectations regarding student practice and required supervision;

(c) The graduate program provides direct supervision of the clinical experience and informs faculty, preceptors and clinical facilities that the student is practicing under this limited exemption; and

(d) The student limits practice to what is required for completion of the graduate program requirements.

Section 9. Ongoing Approval. (1) Approved APRN programs of nursing accredited by a national nursing accrediting body shall be subject to a site visit at intervals associated with their national nursing accreditation.

(2) The board requires continuous accreditation by a national nursing accrediting body.

(3) A joint site visit date shall be established in collaboration with the APRN program of nursing and representatives of the respective national nursing accrediting body. A specific list of information required for review shall be sent to the program at the time that the site visit date is established.

(4) Prior to the site visit, the program of nursing shall submit requested materials that provide evidence of compliance with the standards set forth by the APRN program of nursing national nursing accrediting body.

(5) Factors that may indicate the need for a focused site visit and jeopardize program approval status:

(a) Reported deficiencies in compliance with this administrative regulation;

(b) Noncompliance with the governing institution or program of nursing's stated philosophy, mission, program design, objectives/outcomes, or policies;

(c) Continual failure to submit records or reports to the board within the designated time frame;

(d) Failure to provide sufficient clinical learning opportunities for students to achieve stated outcomes;

(e) Failure to comply with requirements of the board or to respond to recommendations of the board within the specified time;

(f) Failure to submit communication from the accrediting agencies within the time frames identified in Section 4 of this administrative regulation.

(g) Withdrawal of accreditation for either the college/university or the national nursing accrediting body; or if accredited for less than the maximum accreditation period, the program may require additional reports regarding noncompliance;

(h) Failure to obtain approval of a change that requires approval prior to implementation;

(i) Providing false or misleading information to students or the public concerning the program of nursing;

(j) A change in or the inability to secure or retain a qualified APRN program coordinator or faculty as required by their national nursing accrediting body.

(k) Evidence of a high student or faculty attrition rate as compared to the state average;

(l) A change in the ownership or organizational restructuring of the governing institution; or

(m) As deemed necessary by the board or the APRN program of national nursing accrediting body to determine compliance with referenced standards.

(6) If the APRN program of nursing achieves reaccreditation and the board determines that all requirements have been met, the program will be eligible for continuing full approval.

(7) The board shall have the authority to visit a program of nursing on an announced or unannounced basis.

(8) Board action following site visit:

(a) The board shall evaluate a program of nursing in terms of its compliance with this administrative regulation at the same time as the national nursing accrediting body.

(b) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the APRN program coordinator for review and correction of factual data.

(c) The APRN program administration shall be available during the discussion of the report at the board committee to provide clari-

fication.

(d) Following the board's review and decision, a letter shall be sent to the APRN program coordinator and the head of the governing institution regarding the approval status of the program of nursing and any requirements to be met along with required timelines.

(e) A program has the right at any time to present evidence to the board that the deficiency(ies) has been corrected and may petition the board to restore full approval.

Section 10. Approval Status and Withdrawal of Approval. (1) The board shall approve an APRN program of nursing if approval is in the best interest of the public and the program meets the requirements of this administrative regulation. The board may grant developmental approval for a period of two (2) years or less to an APRN program of nursing.

(2) Full approval may be granted for the same period of time that is designated by the national nursing accrediting body.

(3) The APRN program coordinator of a nursing program that has its continuing approval-status rescinded by the board shall meet with representatives of the board to determine actions needed; following this meeting, the program may request a hearing pursuant to KRS Chapter 13B by filing a written request with the board within thirty (30) days of service of the board's order rescinding continuing full-approval status.

(4) Conditional approval shall be the designation granted to a program of nursing if one (1) or more of the standards have not been met.

(a) Following the decision of the board to place a program of nursing on conditional status, the program coordinator shall be notified of the areas of deficiency and the time frame allowed for corrective action to be implemented.

(b) The APRN program coordinator shall, within thirty (30) days of the notice of deficiencies being sent, file a plan to correct each of the deficiencies.

(c) The APRN program coordinator may, within thirty (30) days of the notice of the
deficiencies, request to appear before the board to contest the board's determination
of deficiencies.

(d) If the board's determination of deficiencies has not been contested or if the deficiencies being sent are upheld after a request to contest them, the board may conduct
periodic evaluations of the program of nursing during the time of correction to determine that deficiencies have been corrected.

(e) If the plan of compliance is not completed satisfactorily within the time frame set by the board and if the program of nursing has not been granted additional time for completion, the approval status of the program of nursing shall be adjusted to probational.

(5) Probational approval shall be the designation granted to a program of nursing if one or more standards have continued to be unmet.

(a) Following the decision of the board to place a program of nursing on probational status, the program coordinator shall be notified of the continued areas of deficiency. A new student shall not be admitted until the time the program of nursing comes into compliance. This period of time shall not exceed one academic year.

(b) The APRN program coordinator shall, within thirty (30) days of the notice of the deficiencies being sent, file a plan to correct each of the identified deficiencies.

(c) The APRN program coordinator may, within thirty (30) days, of the notice of the deficiencies, submit a request to appear before the board to contest the board's determination of deficiencies.

(d) If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to determine that deficiencies have been corrected.

(6) If the program of nursing has not corrected the deficiencies within one (1) academic year of being placed on probational status, a hearing pursuant to KRS Chapter 13B shall be conducted to determine whether to withdraw approval of the program of nursing.

(7) If the board decides to withdraw approval of a program of nursing, upon the effective date of the decision the program of nursing shall be removed from the official approved status listing. A program of nursing whose approval has been withdrawn shall:

(a) Allow a student who is currently enrolled in a nursing class to complete the program of nursing; or

(b) Assist a currently enrolled student to transfer to an approved program of nursing.

(8) A program of nursing whose approval has been withdrawn but continues to operate pursuant to subsection 9 of this section shall be continuously monitored by the board until the program closes.

(9) The Board may return an APRN program to full approval status if the program attains and maintains adherence to this administrative regulation.

Section 11. Out-of-state APRN Programs Seeking Clinical Placements in Kentucky. (1) A nursing program, located in another state or territory of the United States that wishes to provide clinical experiences in Kentucky shall seek permission from the Kentucky Council of Postsecondary education before enrolling, offering or conducting such sessions for citizens of the Commonwealth.

(2) For out-of-state nursing programs, the program shall be currently accredited in good standing with a national nursing accrediting body,

(3) An applicant who is denied approval to conduct clinical instruction in Kentucky may request a meeting with board representatives or request a hearing pursuant to KRS Chapter 13B by filing a written request with the board within thirty (30) days of service of the board's order.

(4) The board may rescind approval held by an out-of-state nursing program to
conduct clinical instruction in Kentucky based on factors identified in Section 9 of this administrative regulation.

(5) Programs seeking individual clinical placements of students shall submit the following at least three (3) months prior to beginning of the experience:

(a) Designated university with relevant nursing accreditation status;

(b) Student name;

(c) The clinical practice setting;

(d) The credentials of the coordinating faculty member at the out-of-state institution;

(e) Credentials of the clinical preceptor, consistent with the qualifications outlined in this administrative regulation;

(f) Evidence of the student's qualifications for participation consistent with criteria outlined in Section 8 of this administrative regulation; and.

(g) Evidence of agreement the health care facility hosting the clinical experience.

CAROL A. KOMARA, President

APPROVED BY AGENCY: September 16, 2010

FILED WITH LRC: September 28, 2010 at noon

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards and procedures for schools to obtain approval from the Board of Nursing for APRN educational programs.

(b) The necessity of this administrative regulation: The board is required by House Bill 179 (RS 2010) to promulgate this regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Schools seeking to offer APRN programs of nursing are required to obtain Board approval for these 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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any college or university seeking to offer an APRN program of nursing; number, unknown.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to apply for board approval.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are two fees: $250 for already existing programs and $2,000 for programs that are beginning new programs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: Unknown

(b) On a continuing basis: Unknown

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It references the two fees discussed above.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

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

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

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

(c) How much will it cost to administer this program for the first year? There is no way to estimate the additional costs to administer this program since it is unknown how many schools will apply.

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

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

Revenues (+/-): The administrative regulation will bring in some revenue through the application fees.

Expenditures (+/-): Additional staff time, and the possibility of additional staff, will be needed since this is a new program for the board.

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)

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, 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, 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(5) requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution.[~~EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet.~~] 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. **The definitions with citations to the Code of Federal Regulations shall be governed by 40 C.F.R. Parts 50 through 96, effective July 1, 2010.** (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"**:**

(a) Means the actual rate of emissions of a regulated NSR pollutant from an emissions unit as determined according to the following:

1. 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, unless a different time period is more representative of normal source operation; and

2. The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time periods are used to calculate actual emissions;

(b) Means 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;

(c) Means, for an emissions unit that has not begun normal operations on a particular date, the potential to emit of the unit on that date; and

(d) Does not mean:

1. Calculating if a significant emissions increase has occurred; or

2. Establishing a PAL under 401 KAR 51:017, Section 20[~~is defined by 40 C.F.R. 51.166(b)(21)~~].

(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[~~is defined by 40 C.F.R. 51.166(w)(2)(i)~~].**

(4) "Adverse impact on visibility" is defined by 40 C.F.R. 51.301.

(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 KRS 224.01-010(1).

(7) "Air pollutant" means air contaminant.

(8) "Air pollution" is defined by KRS 224.01-010(3).

(9) "Air pollution control equipment" means a mechanism, device, 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 number of NOx allowances to be credited to a NOx budget unit[**~~is defined by 40 C.F.R. 96.2~~**]**.

(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 calculated using the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate, hours of operation, or both, and the most stringent of the following:

1. The applicable standards codified in 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 actual PAL, the emissions rate of a stationary source 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. through 3. of this subsection[~~is defined by:~~

~~(a) 40 C.F.R. 51.166(b)(16); or~~

~~(b) 40 C.F.R. 51.166(w)(2)(ii) for an actuals PAL~~**]**.

(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 the U.S. EPA and the cabinet.

(15) "Ambient air" **means that portion of the atmosphere, external to buildings, to which the general public has access[**~~is defined by 40 C.F.R. 50.1(e)~~**]**.

(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, unless a different twenty-four (24) hour time period is more representative of normal source operation.

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; 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 a different consecutive twenty-four (24) month period 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, 2990, 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 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.

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used for each regulated NSR pollutant to determine the baseline actual emissions for the emissions units being changed with a different consecutive twenty-four (24) month period;

(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; or

(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[~~is defined by 40 C.F.R. 51.166(b)(47)~~**]**.

(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) μg/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) do not intersect and are not 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[~~is defined by 40 C.F.R. 51.166(b)(15)~~**]**.

(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[**~~is defined by 40 C.F.R. 51.166(b)(13)~~**]**.

(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; and

(b) For a change in method of operations, those on-site activities, other than the preparatory activities, that mark the initiation of the change[~~is defined by 40 C.F.R. 51.166(b)(11)~~**]**.

(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 and:**

(a) Is determined by the cabinet pursuant to 401 KAR 51:017, Section 8, 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 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 pursuant to 40 C.F.R. 51.166(b)(12) that 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[~~is defined by 40 C.F.R. 51.166(b)(12)~~**]**.

(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[**~~is defined by 40 C.F.R. 96.2~~**]**.

(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;

(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[~~is defined by 40 C.F.R. 51.166(b)(6)~~**]**.

(30) "C" means degree Celsius (centigrade).

(31) "Cabinet" is defined by KRS 224.01-010(9).

(32) "Cal" means calorie.

(33) "Capital expenditure" is defined by 40 C.F.R. 60.2.

(34) "cfm" means cubic feet per minute.

(35) "CH_4" means methane.

(36) "Clean coal technology" is defined by 40 C.F.R. 51.166(b)(33).

(37) "Clean coal technology demonstration project" is defined by 40 C.F.R. 51.166(b)(34).

(38) "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(39) "CO" means carbon monoxide.

(40) "CO_2" means carbon dioxide.

(41) "COD" means chemical oxidant demand.

(42)"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[**~~is defined by 40 C.F.R. 96.2~~**]**.

(43) "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[**~~is defined by 40 C.F.R. 96.2~~**]**.

(44) "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[~~:~~

~~(a) Means that an owner or operator 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) Is defined by 40 C.F.R. 51.166(b)(9) for the PSD or NSR program~~**]**.

(45) "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; or

(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[~~is defined by 40 C.F.R. 96.2~~**]**.

(46) "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; or

(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[~~is defined by 40 C.F.R. 96.2~~**]**.

(47) "Complete" is defined by 40 C.F.R. 51.166(b)(22).

(48) "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) "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) "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 the emissions at an air contaminant source[~~:~~

~~(a) Means fabrication, erection, installation, or modification of an air contaminant source; or~~

~~(b) Is defined for use in the PSD or NSR program by 40 C.F.R. 51.166(b)(8)~~**]**.

(51) "Continuous emissions monitoring system" or "CEMS" **means all of the equipment necessary to meet the data acquisition and availability requirements of 401 KAR 51:017 or 51:052 to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis[**~~is defined by:~~

~~(a) 40 C.F.R. 51.166(b)(43) for 401 KAR 51:017; or~~

~~(b) 40 C.F.R. 51.165(a)(1)(xxxi) for 401 KAR 51:052~~**]**.

(52) "Continuous emission monitoring system for NOx" or "CEMS for NOx" **means the equipment required 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 monitoring system:**

(a) Flow monitor;

(b) NOx pollutant concentration monitor;

(c) Diluent gas monitor (O_2 or CO_2);

(d) Continuous moisture monitor; and

(e) Automated data acquisition and handling system[~~is defined by 40 C.F.R. 96.2~~**]**.

(53) "Continuous emissions rate monitoring system" or "CERMS" is defined by 40 C.F.R. 51.166(b)(46).

(54) "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) "Continuous parameter monitoring system" or "CPMS" is defined by:

(a) 40 C.F.R. 51.166(b)(45) for 401 KAR 51:017; or

(b) 40 C.F.R. 51.165(a)(1)(xxxiii) for 401 KAR 51:052.

(56) "Control period" **means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive [**~~is defined by 40 C.F.R. 96.2~~**]**.

(57) "Director" means Director of the Division for Air Quality of the Energy and Environment Cabinet.

(58) "District" is defined by KRS 224.01-010(11).

(59) "dscf" means dry cubic feet at standard conditions.

(60) "dscm" means dry cubic meter at standard conditions.

(61) "Electric generating unit" means, for 401 KAR 51:160 to 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) "Electric utility steam generating unit" or "EUSGU" is defined by 40 C.F.R. 51.166(b)(30).

(63) "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) "Emissions unit" **means any part of a stationary source, including an EUSGU, that emits or has the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and 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[~~is defined by:~~

~~(a) 40 C.F.R. 51.166(b)(7) for 401 KAR 51:017; or~~

~~(b) 40 C.F.R. 51.165(a)(1)(vii) for 401 KAR 51:052~~**]**.

(65) "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 use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

(66) "Equivalent method" **means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet and the U.S. E)PA pursuant to 40 C.F.R. 53.3 to have a consistent and quantitatively known relationship to the reference method, under specified conditions[**~~is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both the U.S. EPA and the cabinet~~**]**.

(67) "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[**~~is defined by 40 C.F.R. 96.2~~**]**.

(68) "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) "Existing source" means a source that is not a new source.

(70) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the national ambient air quality standard for ozone.

(71) "°F" means degree Fahrenheit.

(72) "Federal land manager" is defined by 40 C.F.R. 51.166(b)(24).

(73) "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 the Kentucky SIP approved pursuant to 40 C.F.R. Part 51, Subpart I, including operating permits issued under a U.S. EPA-approved program incorporated into the SIP, that expressly requires adherence to a permit issued under the program[~~is defined by 40 C.F.R. 51.166(b)(17). For purposes of this definition, "administrator" means the U.S. EPA~~**]**.

(74) "Federally **[-]**enforceable permit" means a permit issued under 401 KAR 52:020 or 52:030, as appropriate.

(75) "Fixed capital cost" **means the capital needed to provide all the depreciable components[**~~is defined by 40 C.F.R. 51.166(b)(55)~~**]**.

(76) "Fossil fuel" **means natural gas; petroleum; coal; or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal[**~~is defined by 40 C.F.R. 96.2~~**]**.

(77) "Fossil fuel fired" **means, for 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[~~is defined by 40 C.F.R. 96.2~~**]**.

(78) "ft" means feet or foot.

(79) "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) "Fugitive emissions" **[**~~: (a)~~**]** means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening**[**~~:~~

~~(b) Is defined by 40 C.F.R. 51.166(b)(20) for 401 KAR 51:017; or~~

~~(c) Is defined by 40 C.F.R. 51.165(a)(1)(ix) for 401 KAR 51:052~~**]**.

(81) "g" means gram.

(82) "gal" means gallon.

(83) "General fund" is defined by KRS 48.010(15)(a).

(84) "Generator" **means a device that produces electricity[**~~is defined by 40 C.F.R. 96.2~~**]**.

(85) "gr" means grain.

(86) "HCl" means hydrochloric acid.

(87) "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 is not 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[~~is defined by 40 C.F.R. 96.2. For purposes of this definition, "administrator" means~~**]** the cabinet.

(88) "HF" means hydrogen fluoride.

(89) "Hg" means mercury.

(90) "High terrain" is defined by 40 C.F.R. 51.166(b)(25).

(91) "hr" means hour.

(92) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(93) "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) "H_2O" means water.

(95) "H_2S" means hydrogen sulfide.

(96) "H_2SO_4" means sulfuric acid.

(97) "in" means inch.

(98) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(99) "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) "Innovative control technology" is defined by 40 C.F.R. 51.166(b)(19).

(101) "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) "J" means joule.

(103) "Kg" means kilogram.

(104) "l" means liter.

(105) "lb" means pound.

(106) "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.

(107) "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.

(108) "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(109) "Low terrain" means an area other than high terrain.

(110) "Lowest achievable emissions rate" or "LAER" **means, for any source:**

(a)1. 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 limitation is not achievable; or

2. The most stringent emissions limitation achieved in practice by the class or category of stationary source;

(b) For a major modification, the lowest achievable emissions rate for the new or modified emissions units at the stationary source; and

(c) An emissions limitation that does not exceed the allowable emissions of an applicable standard established pursuant to 40 C.F.R. Parts 60, 61, or 63[~~is defined by 40 C.F.R. 51.165(a)(1)(xiii)~~**]**.

(111) "m" means meter.

(112) "m^3" means cubic meter.

(113) "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 - 7671q for nonattainment areas[~~is defined by 40 C.F.R. 51.166(w)(2)(iv)~~**]**.

(114) "Major modification" **means a physical change in or a change in the method of operation of a major stationary source that results 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 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 a permit issued pursuant to 401 KAR 51:017 or 51:052;

5. An increase in the hours of operation or in the production rate, unless the change is prohibited by 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 401 KAR 52:020 and 51:016E;

6. A change in ownership at a stationary source;

7. 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. 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. The reactivation of a very clean coal-fired electric utility steam-generating unit.

(c) Instead of this definition, the definition for "PAL major modification", in subsection (175) of this section, is used for a particular regulated NSR pollutant, if the major stationary source is complying with the requirements of 401 KAR 51:017, Section 20, and 401 KAR 51:052, Section 11, for a PAL for that pollutant[~~is defined by:~~

~~(a) 40 C.F.R. 51.166(b)(2) for 401 KAR 51:017; or~~

~~(b) 40 C.F.R. 51.165(a)(1)(v) for 401 KAR 51:052~~**]**.

(115)"Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.

(116) "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[**~~is defined by 40 C.F.R. 70.2. For purposes of 401 KAR Chapter 51, "subject to regulation" is defined by this administrative regulation~~**]**.

(117) "Major source baseline date" **means:**

(a) For particulate matter and sulfur dioxide, January 6, 1975; and

(b) For nitrogen dioxide, February 8, 1988[~~is defined by 40 C.F.R. 51.166(b)(14)(i) and (iii)~~**]**.

(118) "Major stationary source" **means:**

(a)1. 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:

a. For ozone nonattainment areas: 100 tons per year of 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;

b. 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

c. Seventy (70) tons per year or more of particulate matter (PM_{10}) in a serious PM_{10} nonattainment area; or

2.a. 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; and

b. Regardless of the stationary source size specified in subclause (i) of this clause, a stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

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 source that is major for volatile organic compounds or nitrogen oxides is considered major for ozone; and

(c) Fugitive emissions are included only if 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 stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412[~~is defined by:~~

~~(a) 40 C.F.R. 51.166(b)(1) for 401 KAR 51:017; or~~

~~(b) 40 C.F.R. 51.165(a)(1)(iv)(A)(1) for 401 KAR 51:052~~**]**.

(119) "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[**~~is defined by 40 C.F.R. 60.2~~**]**.

(120) "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 U.S. Department of Interior, has determined visibility to be an important value.

(121) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the national ambient air quality standard for ozone.

(122) "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[**~~is defined by 40 C.F.R. 96.2~~**]**.

(123) "Maximum potential hourly heat input" **means an hourly heat input used for reporting purposes if 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 diluents gas monitor[~~is defined by 40 C.F.R. 96.2~~**]**.

(124) "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[**~~is defined by 40 C.F.R. 96.2~~**]**.

(125) "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[**~~is defined by 40 C.F.R. 96.2~~**]**.

(126) "µg" means microgram

(127) "mg" means milligram.

(128) "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) "min" means minute.

(130) "Minor source baseline date" **means:**

(a) The earliest date after the trigger date on which a major stationary source or a major modification subject to permit requirements established pursuant to 40 C.F.R. 52.21 or the Kentucky SIP submits a complete application:

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) For TSP increments, that the originally established date remains in effect to determine the amount of available PM10 increments, unless the cabinet rescinds the minor source baseline date pursuant to 40 C.F.R. 51.166(b)(14)(iv); and

(c) A date 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; 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[~~is defined by 40 C.F.R 51.166(b)(14)(ii) - (iv)~~**]**.

(131) "MJ" means megajoules.

(132) "mm" means millimeter.

(133) "MM" means million.

(134) "mo" means month.

(135) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the national ambient air quality standard for ozone.

(136)(a) "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 replacement that the cabinet determines to be routine for a source category considering available information;

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 specification 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[~~is defined by 40 C.F.R 60.2.~~

~~(b) Exceptions to the definition of "modification" are listed in 40 C.F.R. 60.14(e). For purposes of this definition, "administrator" means the cabinet~~**]**.

(137) "Monitoring device" means the total equipment, required by an applicable administrative regulation in 401 KAR Chapters 50 to 65, used to measure and record, if applicable, process parameters.

(138) "Monitoring system" means a monitoring system that meets the requirements of **any applicable administrative regulation in 401 KAR Chapters 50 to 65[**~~40 C.F.R. Part 96~~**]**.

(139) "MWe" means megawatt electrical.

(140) "N_2" means nitrogen.

(141) "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[**~~is defined by 40 C.F.R. 96.2~~**]**.

(142) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(143) "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[**~~is defined by 40 C.F.R. 51.166(b)(10)~~**]**.

(144)**[**~~(a)~~**]** "Net emissions increase" means**:**

(a)[~~,~~**]** 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 as defined 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, 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.

(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.

(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) "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) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified **in the Kentucky SIP[**~~by the cabinet~~**]**.

(147) "ng" means nanograms.

(148) "NO" means nitric oxide.

(149) "NO_2" means nitrogen dioxide.

(150) "Nonattainment major new source review program" or "NSR program" is defined by 40 C.F.R. 51.165(a)(1)(xxx). For purposes of this definition, "administrator" means the U.S. EPA.

(151) "NOx" means nitrogen oxides.

(152) "NOx allowance" is defined by 40 C.F.R. 96.2.

(153) "NOx Allowance Tracking System**" or "NATS[**~~(NATS)~~**]**" is defined by 40 C.F.R. 96.2 For purposes of this definition, "administrator" means the U.S. EPA.

(154) "NOx authorized account representative" is defined by 40 C.F.R. 96.2.

(155) "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) "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) "NOx budget source" is defined by 40 C.F.R. 96.2.

(158) "NOx Budget Trading Program" is defined by 40 C.F.R. 96.2.

(159) "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) "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) "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 unless expressly provided for in a leasehold agreement, does 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) "O_2" means oxygen.

(163) "O_3" means ozone.

(164) "Opacity" **means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background[**~~is defined by 40 C.F.R. 60.2~~**]**.

(165) "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) "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) "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) "Owner", for a NOx budget unit, is defined by 40 C.F.R. 96.2.

(169) "Owner or operator" **means a person who owns, leases, operates, controls, or supervises an affected facility or a source of which an affected facility is a part[**~~is defined by 40 C.F.R. 60.2~~**]**.

(170) "oz" means ounce.

(171) "Ozone depleting potential" or "ODP", means pursuant to 40 C.F.R. Part 82, Subpart A, Appendices A and B, 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 trichlorofluoromethane (CFC-11) in which the ozone depleting potential of CFC-11 is equal to one and zero-tenths (1.0).

(172) "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) "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[~~is defined by 40 C.F.R. 51.166(w)(2)(vi)~~**]**.

(174) "PAL effective period" **means the period beginning with the PAL effective date and ending ten (10) years later[**~~is defined by 40 C.F.R. 51.166(w)(2)(vii)~~**]**.

(175) "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[**~~is defined by 40 C.F.R. 51.166(w)(2)(viii)~~**]**.

(176) "PAL permit" **means the permit issued by the cabinet that establishes a PAL for a major stationary source[**~~is defined by 40 C.F.R. 51.166(w)(2)(ix)~~**]**.

(177) "PAL pollutant" **means the pollutant for which a PAL is established at a major stationary source[**~~is defined by 40 C.F.R. 51.166(w)(2)(x)~~**]**.

(178) "Particulate matter" **means a material, except uncombined water that exists in a finely divided form as a liquid or solid measured by a U.S. EPA-approved test method or a test method approved in the Kentucky SIP[**~~is defined by 40 C.F.R. 60.2~~**]**.

(179) "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[**~~is defined by 40 C.F.R. 51.100(pp), except as used in 40 C.F.R. Part 60~~**]**.

(180) "Peak load" means the maximum instantaneous operating load.

(181) "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) "Person" is defined by KRS 224.01-010(17).

(183) "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.

(184) "$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths (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) "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[**~~is defined by 40 C.F.R. 51.100(qq)~~**]**.

(186) "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.

(187) "Pollution prevention" is defined by 40 C.F.R. 51.166(b)(38).

(188) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(189) "Portland cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcite and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(190) "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:

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 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 the 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:

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 actual PAL, is federally enforceable or enforceable as a practical matter; and

2. Secondary emissions are not counted.[~~:~~

~~(a) Means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design, in which:~~

~~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 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) Is defined by 40 C.F.R. 51.166(b)(4) for 401 KAR 51:017; or~~

~~(c) Is defined by 40 C.F.R. 51.165(a)(1)(iii) for 401 KAR 51:052.~~**]**

(191) "ppb" means parts per billion.

(192) "ppm" means parts per million.

(193) "ppm(w/w)" means parts per million (weight by weight).

(194) "Precalciner kiln" means a kiln in which 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) "Predictive emissions monitoring system" or "PEMS" is defined by 40 C.F.R. 51.166(b)(44).

(196) "Preheater kiln" means a kiln in which the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(197) "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[**~~is defined by 40 C.F.R. 51.166(b)(42)~~**]**.

(198) "Project" **means a physical change in or change in method of operation of an existing major stationary source[**~~is defined by 40 C.F.R. 51.166(b)(51)~~**]**.

(199) "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; or

(b) The maximum annual rate, in tons per year, at which an emissions unit, before beginning actual construction, is projected to emit a regulated NSR pollutant, if the 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 pe-

riod 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[~~is defined by 40 C.F.R. 51.166(b)(40)~~**]**.

(200) "psia" means pounds per square inch absolute.

(201) "psig" means pounds per square inch gage.

(202) "RACT/BACT/LAER Clearinghouse" or "RBLC" means the U.S. EPA's online collection of previous RACT/BACT/LAER determinations.

(203) "Reactivation of a very clean coal-fired EUSGU" is defined by 40 C.F.R. 51.166(b)(37).

(204) "Reasonable further progress" is defined by 42 U.S.C. 7501(1). For purposes of this definition, "administrator" means the U.S. EPA.

(205) "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) "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 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) "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 subject to any standard promulgated under 42 U.S.C. 7411;

(c) A pollutant 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, as defined in subsection (231) of this section, 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[~~is defined by 40 C.F.R. 51.166(b)(49)~~**]**.

(208) "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[~~is defined by 40 C.F.R. 51.166(b)(32)~~**]**.

(209) "Repowering" is defined by 40 C.F.R. 51.166(b)(36).**[**~~For purposes of this definition, "administrator" means the U.S. EPA.~~**]**

(210) "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[~~is defined by 40 C.F.R. 70.2~~**]**.

(211) "Run" **means the net period of time, either intermittent or continuous within the limits of good engineering practice, when an emission sample is collected[**~~is defined by 40 C.F.R. 60.2~~**]**.

(212) "S" means at standard conditions.

(213) "sec" means second.

(214) "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[~~is defined by 40 C.F.R. 51.166(b)(18)~~**]**.

(215) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment for the national ambient air quality standard for ozone.

(216) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment for the national ambient air quality standard for ozone.

(217) "Shutdown" means the cessation of an operation.

(218) "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 (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) µg/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 or nitrogen oxides
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; or

(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 contribute significantly to carbon monoxide levels[~~is defined by:~~

~~(a) 40 C.F.R. 51.166(b)(23) for 401 KAR 51:017; or~~

~~(b) 40 C.F.R. 51.165(a)(1)(x) for 401 KAR 51:052~~**]**.

(219) "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[**~~is defined by:~~

~~(a) 40 C.F.R. 51.166(b)(39) for 401 KAR 51:017; or~~

~~(b) 40 C.F.R. 51.165(a)(1)(xxvii) for 401 KAR 51:052~~**]**.

(220) "Significant emissions unit" **means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount equal to or greater than the applicable significant level as defined in subsection (218) 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[**~~is defined by:~~

~~(a) 40 C.F.R. 51.166(w)(2)(xi) for 401 KAR 51:017; or~~

~~(b) 40 C.F.R. 51.165(f)(2)(xi) for 401 KAR 51:052~~**]**.

(221) "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 defied in subsection (218) of this section; or in 42 U.S.C. 7401 to 7671q, whichever is lower[**~~is defined by:~~

~~(a) 40 C.F.R. 51.166(w)(2)(iii) for 401 KAR 51:017; or~~

~~(b) 40 C.F.R. 51.165(f)(2)(iii) for 401 KAR 51:052~~**]**.

(222) "SO_2" means sulfur dioxide.

(223) "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) "sq" means square.

(225) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(226) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65 or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(227) "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)**; or[**~~.~~**]**

(228) "Start-up" or "startup" means the setting in operation of an affected facility.

(229) "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) "Stationary source" **means a building, structure, facility, or installation that emits or has the potential to emit a regulated NSR pollutant[**~~is defined by 40 C.F.R. 51.166(b)(5)~~**]**.

(231) "Subject to regulation" is defined by 40 C.F.R. 51.166(b)(48) **[**~~for the PSD and NSR programs~~**]**.

(232) "Submit" means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.

(233) "TAPPI" means Technical Association of the Pulp and Paper Industry.

(234) "Temporary clean coal technology demonstration project" is defined by 40 C.F.R. 51.166(b)(35).

(235) "Ton" or "tonnage"**,** for a NOx budget source**, means 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[**~~is defined by 40 C.F.R. 96.2~~**]**.

(236) "Total suspended particulates" or "TSP" **means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B[**~~is defined by 40 C.F.R. 51.100(ss)~~**]**.

(237) "tpy" means tons per year.

(238) "TSS" means total suspended solids.

(239) "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.

(240) "Unit" **means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system**[~~is defined by 40 C.F.R. 96.2~~]**.**

(241) "Urban county" means a county that is a part of an urbanized area with a population greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county is classified as urban for 401 KAR Chapters 50 to 65.

(242) "Urbanized area" means an area defined by the U.S. Department of Commerce, Bureau of Census.

(243) "U.S. EPA" means the United States Environmental Protection Agency.

(244) "UTM" means Universal Transverse Mercator.

(245) "Visibility impairment" is defined by 40 C.F.R. 51.301.

(246) "Volatile organic compound" or "VOC" is defined by 40 C.F.R. 51.100(s).

(247) "yd" means yard.

[~~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.The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time periods are used to calculate actual emissions.~~

~~(b) 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.~~

~~(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.~~

~~(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) Is to be made on a case-by-case basis;~~

~~(b) 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) 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 KRS 224.01-010(1).~~

~~(7) "Air pollutant" means air contaminant.~~

~~(8) "Air pollution" is defined by KRS 224.01-010(3).~~

~~(9) "Air pollution control equipment" means a mechanism, device, 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 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 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 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.~~

~~(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 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 a different consecutive twenty-four (24) month period 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 appli-~~

cation is received by the cabinet for a permit required under 401 KAR 51:017 or 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 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 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;

(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 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) "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(39) "CO" means carbon monoxide.

(40) "CO_2" means carbon dioxide.

(41) "COD" means chemical oxidant demand.

(42)"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) "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) "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) "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) "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) "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) "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) "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) "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) "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 51:052 to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(52) "Continuous emissions 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 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) "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) "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) "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 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) "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) "Director" means Director of the Division for Air Quality of the Energy and Environment Cabinet.

(58) "District" is defined by KRS 224.01-010(11).

(59) "dscf" means dry cubic feet at standard conditions.

(60) "dscm" means dry cubic meter at standard conditions.

(61) "Electric generating unit" means, for 401 KAR 51:160 to 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) "Electric utility steam generating unit" or "EUSGU" means, for the PSD and NSR programs:

(a) A steam electric generating unit 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) "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) "Emissions unit" means any part of a stationary source, including an EUSGU, that emits or has the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and 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) "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 use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

(66) "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 40 C.F.R. 53.3 to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(67) "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) "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) "Existing source" means a source that is not a new source.

(70) "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) "°F" means degree Fahrenheit.

(72) "Federal land manager" means, for any lands in the United States, the secretary of the department with authority over those lands.

(73) "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) "Federally-enforceable permit" means a permit issued under 401 KAR 52:020 or 52:030, as appropriate.

(75) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(76) "Fossil fuel" means natural gas; petroleum; coal; or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(77) "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) "ft" means feet or foot.

(79) "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) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(81) "g" means gram.

(82) "gal" means gallon.

(83) "General fund" is defined by KRS 48.010(15)(a).

(84) "Generator" means a device that produces electricity.

(85) "gr" means grain.

(86) "HCl" means hydrochloric acid.

(87) "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) "HF" means hydrogen fluoride.

(89) "Hg" means mercury.

(90) "High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.

(91) "hr" means hour.

(92) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(93) "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) "H_2O" means water.

(95) "H_2S" means hydrogen sulfide.

(96) "H_2SO_4" means sulfuric acid.

(97) "in" means inch.

(98) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(99) "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) "Innovative control technology" means a system of air pollution control that has not been adequately demonstrated in practice, but has 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) "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) "J" means joule.

(103) "Kg" means kilogram.

(104) "l" means liter.

(105) "lb" means pound.

(106) "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.

(107) "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.

(108) "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(109) "Low terrain" means an area other than high terrain.

(110) "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) "m" means meter.

(112) "m^3" means cubic meter.

(113) "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. 7401-7671q for nonattainment areas.

(114) "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.

(115)"Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.

(116) "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) "Major source baseline date" means:

(a) For particulate matter and sulfur dioxide, January 6, 1975; and

(b) For nitrogen dioxide, February 8, 1988.

(118)(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: one hundred (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 of the stationary source size specified in subclause (i) of this clause, a stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

2. 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 stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

(119) "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.

(120) "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) "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) "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) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes if 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) "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) "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) "µg" means microgram.

(127) "mg" means milligram.

(128) "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) "min" means minute.

(130) (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 the 40 C.F.R. 51.166 submits a complete application under applicable administrative 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 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; 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) "MJ" means megajoules.

(132) "mm" means millimeter.

(133) "MM" means million.

(134) "mo" means month.

(135) "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) "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 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) "Monitoring device" means the total equipment, required by an applicable administrative regulation in 401 KAR Chapters 50 to 65, used to measure and record, if applicable, process parameters.

(138) "Monitoring system" means a monitoring system that meets the requirements of 40 C.F.R. Part 96.

(139) "MWe" means megawatt electrical.

(140) "N_2" means nitrogen.

(141) "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) "Natural conditions" means those naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(143) "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) (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 as defined 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, 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.

(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.

(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) "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) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(147) "ng" means nanograms.

(148) "NO" means nitric oxide.

(149) "NO_2" means nitrogen dioxide.

(150) "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) "NOx" means nitrogen oxides.

(152) "NOx allowance" means an authorization to emit one (1) ton of NOx during a control period under the NOx Budget Trading Program.

(153) "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) "NOx authorized account representative" means the 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) "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) "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) "NOx budget source" means a source that includes one (1) or more NOx budget units.

(158) "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) "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) "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) "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 unless expressly provided for in a leasehold agreement, does 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) "O_2" means oxygen.

(163) "O_3" means ozone.

(164) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(165) "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) "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) "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) "Owner" means, for a NOx budget unit, the following 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 and unless expressly provided for in a leasehold agreement, 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) "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) "oz" means ounce.

(171) "Ozone depleting potential" or "ODP", means pursuant to 40 C.F.R. Part 82, Subpart A, Appendices A and B, 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).

(172) "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) "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) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.

(175) "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) "PAL permit" means the permit issued by the cabinet that establishes a PAL for a major stationary source.

(177) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

(178) "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) "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.

(180) "Peak load" means the maximum instantaneous operating load.

(181) "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) "Person" is defined by KRS 224.01-010(17).

(183) "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.

(184) "$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths (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) "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) "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.

(187) "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) "Portland cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates.

(189) "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) "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:

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 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:

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) "ppb" means parts per billion.

(192) "ppm" means parts per million.

(193) "ppm(w/w)" means parts per million (weight by weight).

(194) "Precalciner kiln" means a kiln in which 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) "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process parameters, such as control device secondary voltages and electric currents, and to monitor control device operational parameters, such as gas flow rate, ozone concentrations or carbon dioxide concentrations, and to calculate and record the mass emissions rate on a continuous basis.

(196) "Preheater kiln" means a kiln in which the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that forms clinker.

(197) "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) "Project" means a physical change in or change in method of operation of an existing major stationary source.

(199) "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) "psia" means pounds per square inch absolute.

(201) "psig" means pounds per square inch gage.

(202) "RACT/BACT/LAER Clearinghouse" or "RBLC" means the U.S. EPA's online collection of previous RACT/BACT/LAER determinations.

(203) "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) "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) "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) "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) "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 subject to any standard promulgated under 42 U.S.C. 7411;

(c) A pollutant 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) "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) "Repowering" means:

(a) 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) 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) A permit application from a source pursuant to this subsection receives expedited consideration by the cabinet and is granted an extension under 42 U.S.C. 7651h.

(210) "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) "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) "S" means at standard conditions.

(213) "sec" means second.

(214) "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) "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) "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) "Shutdown" means the cessation of an operation.

(218) "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 or nitrogen oxides
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) "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) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount equal to or greater than the applicable significant level as defined in subsection (218) 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) "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 this section; or in 42 U.S.C. 7401 to 7671q, whichever is lower.

(222) "SO_2" means sulfur dioxide.

(223) "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) "sq" means square.

(225) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(226) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65 or the emission control requirements necessary to comply with 401 KAR Chapter 51.

(227) "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) "Start-up" or "startup" means the setting in operation of an affected facility.

(229) "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) "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

(231) "Submit" means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.

(232) "TAPPI" means Technical Association of the Pulp and Paper Industry.

(233) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project 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) "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) "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

(236) "tpy" means tons per year.

(237) "TSS" means total suspended solids.

~~(238) "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) "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.~~

~~(240) "Urban county" means a county that is a part of an urbanized area with a population greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county is classified as urban for 401 KAR Chapters 50 to 65.~~

~~(241) "Urbanized area" means an area defined by the U.S. Department of Commerce, Bureau of Census.~~

~~(242) "U.S. EPA" means the United States Environmental Protection Agency.~~

~~(243) "UTM" means Universal Transverse Mercator.~~

~~(244) "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) "Volatile organic compound" or "VOC" is defined in 40 C.F.R. 51.100(s).~~

~~(246) "yd" means yard.~~]

Section 2. Incorporation by Reference. (1) **The following material is incorporated by reference:**

(a) "North American Industry Classification System", 2007, as published by the Office of Management and Budget; and

(b) "Standard Industrial Classification Manual", 1987, as published by the Office of Management and Budget is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the following main and regional offices 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, Frankfort, Kentucky 40601-1403, (502) 564-3999;

(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, **200 Fair Oaks Lane, Third Floor**[~~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) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(h) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(i) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.

(3) 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.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 11 a.m.

CONTACT PERSON: Laura Lund, Environmental Technologist II, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, telephone (502) 564-3999, ext. 4428, fax (502) 564-4666, email Laura_Lund@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Lund

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 51.

(b) The necessity of this administrative regulation: This administrative regulation provides clear and consistent definitions for terms used in 401 KAR Chapter 51.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for this regulation is given in KRS 224.10-100(5), which provides the cabinet the authority, power, and duty to prevent and control air pollution. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the public and the regulated community by providing clear and consistent definitions for terms used in 401 KAR Chapter 51.

(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 revises definitions to reflect amendments made to the New Source Review (NSR) program at the federal level. The Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule), published as a final rule on June 3, 2010, amends and creates definitions that significantly impact the Prevention of Significant Deterioration (PSD) and Title V permitting programs. The amendments are to the definitions for "Regulated NSR pollutant", which includes greenhouse gases (GHGs) as a regulated NSR pollutant under the Clean Air Act, and the inclusion of a definition for "subject to regulation", which includes the greenhouse gas emission thresholds to trigger PSD permitting. This regulation is also being amended to conform to KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The definition amendments are necessary at the state level to ensure consistency between state and federal programs. The Tailoring Rule establishes January 2, 2011, as the trigger date for GHGs to become regulated. The U.S. EPA found Kentucky's State Implementation Plan (SIP) deficient on September 2, 2010 (75 FR 53892) because it was determined that Kentucky does not have authority to issue PSD permits for GHGs. If Kentucky's GHG SIP revision is not in place by March 31, 2011, the Commonwealth will become subject to the Federal Implementation Plan, which was also issued on September 2, 2010 (75 FR 53883). Serious consequences of a FIP include loss of PSD and Title V program approvals and loss of federal highway funds. EPA clearly states their intent in the preamble to SIP call: "For any state that lacks the ability to issue PSD or Title V permits for GHG emissions sources consistent with the final rule, we [EPA] intend to undertake a separate action to call for revisions to these programs. We [EPA] also intend to move quickly to impose a FIP for PSD through 40 C.F.R. 52.21, and use our federal Title V authority to ensure that GHG sources will be permitted consistent with the final rule." This amendment also clarifies that small businesses will not be regulated solely because of their greenhouse gas emissions by tailoring the threshold limits.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment maintains consistency with corresponding federal definitions affecting Kentucky's PSD and Title V permitting programs.

(d) How the amendment will assist in the effective administration of statutes: This amendment will provide clear and consistent definitions of terms used in 401 KAR Chapter 51 to prevent and control air pollution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this administrative regulation affects any facility with the capacity to emit greenhouse gases at or above the thresholds specified in the GHG Tailoring Rule. This includes PSD and Title V sources of greenhouse gas emissions but does not affect smaller emitters of greenhouse gases. U.S. EPA has estimated that without the Tailoring Rule there would be 82,000 permitting actions nationwide per year necessary to address greenhouse gas emissions, but with the implementation of the rule that number is reduced to 1,600 nationwide. The Division for Air Quality has estimated this regulation amendment to affect 30 – 40 permitting actions per year in Kentucky. If these amendments are not made, Kentucky's permitting authority for these sources will become void.

(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: Amendments to the current regulation will include the regulation of greenhouse gas emissions. For those sources emitting at or above the major source threshold for greenhouse gas emissions, new permits will have to be issued.

(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: Sources permitted under the Title V program will have to submit a permit application identifying and reporting the emissions, but there will be no new requirements or standards imposed on the source. Sources permitted under the PSD program will have to submit a permit application including Best Available Control Technology (BACT) review for greenhouse gas emissions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no emission fees associated with the regulation of greenhouse gas emissions. The emission fee requirements of 401 KAR 50:038 do not apply to greenhouse gas emissions or carbon dioxide equivalent at this point. For those sources that must provide a BACT analysis, there is the additional cost to meet the requirements of the BACT determination. As BACT has not yet been established, it is unknown what these costs may be, since BACT determinations are project specific. Additionally, sources required to obtain a new permit will have the expense of completing a permit application. U.S. EPA has estimated that a Title V permit application for greenhouse gas sources would cost each source, on average, between $23,200 and $46,400.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These major sources will remain in compliance with state and federal regulations. The cabinet will remain the permitting authority for air quality permits, with permit applications being submitted directly to the cabinet rather than to the U.S. EPA.

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

(a) Initially: The inclusion of greenhouse gases in stationary source permits will require the Division for Air Quality to expand staff to review the increased permit load and inspect changes made to sources as a result of this regulation.

(b) On a continuing basis: The cabinet must maintain the additional staff in order to handle the increase in permit issuance. U.S. EPA has estimated that a Title V permit application for greenhouse gas sources would cost a permitting authority, on average, between $9,844 and $19,688 to process each source permit.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any additional expense incurred by the Division for Air Quality to regulate greenhouse gas emissions would be paid for through current agency funds. The cabinet is not requesting additional general funds for the implementation and enforcement of the regulation. With this promulgation, there will be no emissions fees for GHG emissions. In Phase I of the federal mandate, there are no additional emission fees associated with GHG emissions. However, sources that are brought under PSD or Title V permitting during Phases II and III of the federal mandate solely because of GHG emissions will be subject to Title V emission fees for particulate matter, SO_2, NOx, and VOC emissions.

(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 cabinet is not requesting additional general funds for the implementation of this administrative regulation. However, Title V emission fees may be impacted by the implementation of this administrative regulation, as stated above in response (6).

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees. This administrative regulation does not establish fees, but as stated above in response (7), Title V emission fees may be impacted.

(9) TIERING: Is tiering applied? Yes. The Tailoring Rule amends the threshold of greenhouse gas emission levels subject to regulation. This tiering revision was necessary to prevent small businesses and individuals from becoming subject to permitting requirements solely due to greenhouse gas emissions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. As a SIP-approved state for the PSD program under 40 C.F.R. 51.166, recent changes in the federal PSD or NSR and Title V programs make it necessary to revise the regulation in order to maintain federal approvability. Failure to do so will result in a Federal Implementation Plan.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. Changes in the federal definitions for this program necessitate amendments in the state definitions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division for Air Quality as the applicability of other administrative regulations is altered. Any state or local government that emits greenhouse gases in the thresholds subject to the PSD or Title V permitting programs would be required to obtain a permit from the Division for Air Quality.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), (26); 42 U.S.C. 7401, 7410, 7471, 7607; and 40 C.F.R. 51.166.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue, but Title V fees may be impacted by the implementation of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue, but Title V fees may be impacted by the implementation of this regulation.

(c) How much will it cost to administer this program for the first year? The U.S. EPA has estimated that it will cost the permitting authority between $9,844 and $19,688 per permit issued, and the Division for Air Quality has estimated 30 – 40 permit actions per year. Therefore, it is estimated that an increase of between $300,000 and $800,000 will be necessary to operate this program.

(d) How much will it cost to administer this program for subsequent years? The U.S. EPA has estimated that it will cost the permitting authority between $9,844 and $19,688 per permit issued, and the Division for Air Quality has estimated 30 – 40 permit actions per year. Therefore, it is estimated that an increase of between $300,000 and $800,000 will be necessary to operate this program.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)

401 KAR 52:001. Definitions for 401 KAR Chapter 52.

RELATES TO: KRS 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Parts 50-53, 60-63, 70-78, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet[~~Environmental and Public Protection Cabinet~~] to promulgate administrative regulations for the prevention, abatement, and control of air pollution. **[**~~There is no federal mandate for this administrative regulation.~~**]** This administrative regulation defines the terms used in 401 KAR Chapter 52. The definitions contained in this administrative regulation are neither more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. **The definitions with citations to the Code of Federal Regulations shall be governed by 40 C.F.R. Parts 50 through 96, effective July 1, 2010.**

(1) "Acid Rain Program" means the national program for reducing SO_2 and NOx emissions established under 42 U.S.C. 7651 to 7651o (Title IV of the Act) and codified at 40 C.F.R. Parts 72 to 78.

(2) "Act" means the Clean Air Act established under 42 U.S.C. 7401 to 7671q.

(3) "Actual emissions" **means the quantity of an air pollutant that is physically emitted into the ambient air during a specified time period.** **[**~~is defined by 40 C.F.R. 51.166(b)(21).~~][~~means the quantity of an air pollutant that is physically emitted into the ambient air during a specified time period.~~]

(4) "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.

(5) "Affected source" means a source that includes one (1) or more affected units.

(6) "Affected state"[~~states"~~] means a state[~~states~~] that:

(a) Borders[~~Border~~] Kentucky and whose air quality may be affected by the proposed permit, permit revision, or permit renewal; or

(b) Is[~~Are~~] situated within fifty (50) miles of the source requesting the proposed permit action.

(7) "Affected unit" means a unit subject to the Acid Rain Program.

(8) "Air contaminant" is defined by[~~in~~] KRS 224.01-010(1).

(9) "Air pollutant" means air contaminant.

(10) "Air pollution" is defined by[~~in~~] KRS 224.01-010(3).

(11) "Air pollution control equipment" means a mechanism, device, 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.

(12) "Alternative method" is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both the 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.~~]

(13) "Ambient air" **means that portion of the atmosphere, external to buildings, to which the general public has access.** **[**~~is defined by 40 C.F.R. 50.1(e).~~][~~means that portion of the atmosphere, external to buildings, to which the general public has access.~~]

(14) "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.

(15) "Applicable requirement" means a state-origin or federally enforceable requirement or standard that applies to a source.

(16) "Batch mix plant" means a source or affected facility that produces hot mix asphalt by heating and drying the aggregate in a dryer before separating and mixing it with asphalt cement in separate batches.

(17) "Cabinet" is defined by KRS 224.01-010(9).[~~in KRS 224.01-010.~~]

(18) "Capital expenditure" is defined by[~~in~~] 40 C.F.R. 60.2.

(19) "Commence" means that an owner or operator 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.

(20) "Construction" means fabrication, erection, installation, or modification of an air contaminant source.

(21) "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.

(22) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

(23) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.

(24) "Designated representative" means a person authorized by the owner or operator[~~owners or operators~~] of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA in accordance with 40 C.F.R. 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Acid Rain Program. In matters relating to the acid rain portion of a Title V permit, the term "responsible official", as defined in this section, means the designated representative.

(25) "Draft permit" means the version of a federally enforceable permit, which the cabinet offers for public review and any applicable affected state review.

(26) "Drum mix plant" means a source or affected facility that produces hot mix asphalt by heating, drying, and mixing the aggregate with asphalt cement in one (1) operation.

(27) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source that:[~~which:~~]

(a) Requires immediate corrective action to restore normal operation;

(b) Causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency; and

(c) Does[~~Shall~~] not include noncompliance caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(28) "Emission standard" means the numerical expression of quantity per unit of time or other parameter that limits the amount of a regulated air pollutant that a source or emission unit is allowed to emit to the ambient air.

(29) "Emission unit" means an affected facility, or a part or activity of a source, that emits or has the potential to emit a regulated air pollutant and does not alter the definition of the term "unit" as used in the Acid Rain Program.

(30) "Emissions fee" means the annual fee assessed to a source as prescribed in 401 KAR 50:038, made effective April 12, 1995.[~~"Emissions fee" means the annual fee assessed to a source as prescribed in 401 KAR 50:038, made effective April 12, 1995.~~]

~~(29) "Emission unit" means an affected facility, or a part or activity of a source, that emits or has the potential to emit a regulated air pollutant and does not alter the definition of the term "unit" as used in the Acid Rain Program.~~

~~(30) "Emission standard" means the numerical expression of quantity per unit of time or other parameter that limits the amount of a regulated air pollutant that a source or emission unit is allowed to emit to the ambient air.~~]

(31) "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 will use to achieve and demonstrate compliance with the standards, including appropriate monitoring, recordkeeping, and reporting.

(32) "Equivalent method" **means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet and the U.S. EPA pursuant to 40 C.F.R. 53.3 to have a consistent and quantitatively known relationship to the reference method, under specified conditions. [**~~is defined by 40 C.F.R. 60.2. For purposes of this definition, "administrator" means both the U.S. EPA and the cabinet.~~]~~[~~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 to have a consistent and quantitatively known relationship to the reference method, under specified conditions.~~]

(33) "Exempt compound" or "exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(34) "Federally enforceable requirement" means an item specified in this subsection as it applies to an emission unit at a source subject to 40 C.F.R. Part 70, including a requirement promulgated or approved by the U.S. EPA in conjunction with the permit issuance but which has future-effective compliance dates.

(a) A standard or requirement in the SIP that implements the relevant requirements of the Act, including a revision to that plan promulgated at 40 C.F.R. Part 52;

(b) A term or condition of a preconstruction permit issued pursuant to **an applicable administrative regulation in 401 KAR Chapters 50 to 65 [**~~administrative regulations~~**]** approved or promulgated pursuant to 42 U.S.C. 7401 to 7515;

(c) A standard or other requirement promulgated pursuant to 42 U.S.C. 7411 or 7429 governing solid waste incinerators;

(d) A standard or other requirement promulgated pursuant to 42 U.S.C. 7412;

(e) A standard or requirement of the Acid Rain Program;

(f) A requirement established pursuant to 42 U.S.C. 7414(a)(3) or 7661c(b) for monitoring and compliance certification;

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 U.S.C. 7470 to 7492 for a temporary source permitted pursuant to 42 U.S.C. 7661c(e);

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 U.S.C. 7511b(e);

(i) A standard or other requirement for a tank vessel adopted pursuant to 42 U.S.C. 7511b(f); and

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 U.S.C. 7671 to 7671q, unless the U.S. EPA determines that those requirements need not be contained in the permit.[~~"Federally enforceable requirement" means the items specified in this subsection as they apply to emission units at a source subject to 40 C.F.R. Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:~~

~~(a) Standards or requirements in the state implementation plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 C.F.R. Part 52;~~

~~(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 U.S.C. 7401 to 7515;~~

~~(c) A standard or other requirement promulgated pursuant to 42 U.S.C. 7411 or 7429 governing solid waste incinerators;~~

~~(d) A standard or other requirement promulgated pursuant to 42 U.S.C. 7412;~~

~~(e) Standards or requirements of the Acid Rain Program;~~

~~(f) Requirements established pursuant to 42 U.S.C. 7661c(b) or 7414(a)(3) for monitoring and compliance certification;~~

~~(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 U.S.C. 7470 to 7492 for temporary sources permitted pursuant to 42 U.S.C. 7661c(e);~~

~~(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 U.S.C. 7511b(e);~~

~~(i) A standard or other requirement for tank vessels adopted pursuant to 42 U.S.C. 7511b(f); and~~

~~(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 U.S.C. 7671 to 7671q, unless the U.S. EPA determines that those requirements need not be contained in the permit.~~]

(35) "Final permit" means:

(a) For a federally enforceable permit, the version issued by the cabinet that has completed all the applicable review procedures of 401 KAR 52:100 and for which a final determination has been made; or[~~.~~]

(b) For a state-origin permit, the version that meets the applicable provisions of 401 KAR 52:040, and for which a final determination has been made.

(36) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(37) "Fuel" means natural gas; petroleum; coal; wood;[~~gas, petroleum, coal, wood,~~] or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(38) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(39) "Hazardous air pollutant" or "HAP" means a pollutant listed pursuant to 42 U.S.C. 7412(b).

(40) "Hot mix asphalt plant" means a stationary source or portable affected facility that manufactures hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements.

(41) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(42) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(43) "Intermittent emissions" means emissions of particulate matter into the open air from a process that operates for less than any six (6) consecutive minutes.

(44) "KyEIS" means the Kentucky Emissions Inventory System.

(45) "Major source" **means a stationary source or a group of stationary sources that emits or has a potential to emit a pollutant that is subject to regulation at or above a major source threshold and:**

(a) For HAPs:

1. Is located within a contiguous area;

2. Is under common control;

3. Includes all fugitive HAP emissions in determining if the source is major; and

4. Even if the units are in a contiguous area under common control, emissions are not aggregated with emissions from other similar units to determine major source status for:

a. Oil or gas exploration or production wells and the associated equipment; or

b. Pipeline compressors or pump stations; and

(b) For regulated air pollutants other than HAPs:

1. Is located on one (1) or more contiguous or adjacent properties;

2. Is under common control;

3. Belongs to a single major industrial grouping where all of the pollutant emitting activities belong to the same major group (i.e., all have the same two (2) digit code) as described in the 1987 Standard Industrial Classification (SIC) Manual; and

4. Fugitive emissions are considered in determining if the source is major if it belongs to a category listed in this clause:

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;

u. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;

v. Petroleum storage and transfer units with a total storage capacity of more than 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 BTU per hour of heat input; or

aa. All other stationary source categories subject to a standard promulgated pursuant to 42 U.S.C. 7411 or 42 U.S.C. 7412 and for which the U.S. EPA has made an affirmative determination pursuant to 42 U.S.C. 7602(j). **[**~~is defined by 40 C.F.R. 70.2. For purposes of 401 KAR Chapter 52, "subject to regulation" is defined by this administrative regulation.~~**]**[~~means a stationary source or a group of stationary sources that emits or has a potential to emit at or above a major source threshold and:~~

~~(a) For HAPs:~~

~~1. Is located within a contiguous area;~~

~~2. Is under common control;~~

~~3. Includes all fugitive HAP emissions in determining if the source is major; and~~

~~4. Even if the units are in a contiguous area under common control, emissions are not aggregated with emissions from other similar units to determine major source status for:~~

~~a. Oil or gas exploration or production wells and the associated equipment; or~~

~~b. Pipeline compressors or pump stations; and~~

~~(b) For regulated air pollutants other than HAPs:~~

~~1. Is located on one (1) or more contiguous or adjacent properties;~~

~~2. Is under common control;~~

~~3. Belongs to a single major industrial grouping where all of the pollutant emitting activities belong to the same major group (i.e., all have the same two (2) digit code) as described in the 1987 Standard Industrial Classification (SIC) Manual; and~~

~~4. Fugitive emissions are considered in determining if the source is major if it belongs to a category listed in this clause:~~

~~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;~~

~~u. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;~~

~~v. Petroleum storage and transfer units with a total storage capacity of more than 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 BTU per hour of heat input; or~~

~~aa. All other stationary source categories subject to a standard promulgated pursuant to 42 U.S.C. 7411 or 42 U.S.C. 7412 and for which the U.S. EPA has made an affirmative determination pursuant to 42 U.S.C. 7602(j).~~]

(46) "Major source threshold" means PTE:

(a) For HAPs:

1. Ten (10) tons per year or more of a single HAP;

2. Twenty-five (25) tons per year or more of combined HAPs; or

3. A lesser quantity that the U.S. EPA establishes in a final rulemaking; **[**~~or~~**]**

(b) 100 tons per year or more for regulated air pollutants other than HAPs, except that:

1. For ozone nonattainment areas:

a. 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as marginal or moderate;

b. Fifty (50) tons per year or more in areas classified as serious;

c. Twenty-five (25) tons per year or more in areas classified as severe; or

d. Ten (10) tons per year or more in areas classified as extreme;

2. Fifty (50) tons per year or more of carbon monoxide for carbon monoxide nonattainment areas that are classified as serious and in which stationary sources contribute significantly to carbon monoxide levels; or

3. Seventy (70) tons per year or more of particulate matter (PM_{10}) for PM_{10} nonattainment areas classified as serious**; or**

(c) A quantity established by the U.S. EPA in a final rulemaking for a pollutant that is subject to regulation.

(47) "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 could have been reasonably prevented.** **[**~~is defined by 40 C.F.R. 60.2.~~**]**[~~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 could have been reasonably prevented.~~]

(48) "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~~].

(49) "Minor source" means a stationary source that emits and has the potential to emit less than the major source thresholds.

(50) "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~~].

(51)**[**~~(a)~~**]** "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 regulated air pollutant emitted into the atmosphere by that facility, or that results in the emission of any regulated air pollutant into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category considering available information;

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 shall be 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, except if an emission control system is removed or is replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source. [~~is defined by 40 C.F.R. 60.2.~~

~~(b) Exceptions to the definition of "modification" are listed in 40 C.F.R. 60.14(e). For purposes of this definition, "administrator" means the cabinet.~~**]**[~~means any physical change in, or a change in the method of operation of, an affected facility that:~~

~~(a) Increases the amount of any regulated air pollutant emitted into the atmosphere by that facility, or that results in the emission of any regulated air pollutant into the atmosphere not previously emitted; and~~

~~(b) Is not solely:~~

~~1. Maintenance, repair, and 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 shall be 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, except if an emission control system is removed or is replaced by a system that the cabinet determines to be less environmentally beneficial; or~~

~~7. The relocation or change in ownership of a source.~~]

(52) "Modification under Title I of the Act" means a change at a facility that constitutes[~~would constitute~~] a modification under 42 U.S.C. 7470 to 7492 or 42 U.S.C. 7501 to 7515.

(53) "Opacity" **means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. [**~~is defined by 40 C.F.R. 60.2.~~**]**[~~means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.~~]

(54) "Owner or operator" **means a person who owns, leases, operates, controls, or supervises an affected facility or a source of which an affected facility is a part. [**~~is defined by 40 C.F.R. 60.2.~~**]**[~~means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.~~]

(55) "Person" is defined by KRS 224.01-010(17).[~~means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.~~]

(56) "Potential to emit" or "PTE" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design in which[~~where~~]:

(a) 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

(b) **[**~~This definition does not alter or affect the~~**]** Use of this term for other purposes of the Act or **for** the term "capacity factor" as used in the Acid Rain Program **is not altered**.

(57) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for a forty-five (45) day review period.

(58) "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 in 401 KAR Chapters 50 to 65.[~~68.~~]

(59) "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.

(60) "Regulated air pollutant" means:

(a) Nitrogen oxides;

(b) Volatile organic compounds;

(c) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 U.S.C. 7409 (Section 109 of the Act);

(d) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 U.S.C. 7671 to 7671q (Title VI of the Act);

(e) A pollutant subject to a standard promulgated pursuant to 42 U.S.C. 7411; **or**

(f) A hazardous air pollutant (HAP) subject to a standard or other requirement established pursuant to 42 U.S.C. 7412.

(61) "Renewal" means the process by which a permit is reissued at the end of its permit term.

(62) "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 by the cabinet in advance 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. For this administrative regulation, 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 (e.g., a regional administrator of the U.S. EPA); or

(d) For the acid rain portion of a permit for an affected source, the designated representative. [~~is defined by 40 C.F.R. 70.2.~~**]**[~~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 either:~~

~~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;~~

~~(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. For this administrative regulation, 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~~

~~(e.g., a regional administrator of the U.S. EPA); or~~

~~(d) For the acid rain portion of a permit for an affected source, the designated representative.~~]

(63) "Section 502(b)(10) changes" means changes that contravene an express permit term and does not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(64) "Shutdown" means the cessation of an operation.

(65) "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.

(66) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard 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.

(67) "Start-up" or "startup" means the setting in operation of an affected facility.

(68) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410, that[~~which~~] has been approved by the U.S. EPA.

(69) "State-origin permit" means a permit that is issued pursuant to 401 KAR 52:040 and is not federally enforceable.

(70) "State-origin requirement" means an applicable requirement contained in 401 KAR Chapters 50 to 65, which is not mandated by the Act and is not federally enforceable.

(71) "Stationary source" means a building, structure, affected facility, or installation that emits or may emit a regulated air pollutant **or an air pollutant subject to regulation pursuant to 40 C.F.R. 70.2**.

(72) "Subject to regulation" is defined by 40 C.F.R. 70.2 for the Title V program.

(73) "Title V permit" means a permit issued under Kentucky's Title V program.

(74)[~~pursuant to 401 KAR 52:020 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995 (60 FR 57186) and made effective on December 14, 1995.~~

~~(73)~~] "Title V program" means a state operating permit program approved by the U.S. EPA pursuant to 42 U.S.C. 7661 to 7661f (Title V of the Act).

(75)[~~(74)~~] "Total suspended particulates" or "TSP" **means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.** **[**~~is defined by 40 C.F.R. 51.100(ss).~~**]**

(76)[~~means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.~~

~~(75)~~] "tpy" means ton per year.

(77)[~~(76)~~] "U.S. EPA" means the U.S. Environmental Protection Agency.

(78)[~~(77)~~] "Volatile organic compound" or "VOC" is defined by[~~in~~] 40 C.F.R. 51.100(s).

(79)[~~(78)~~] "Waste oil" means a petroleum based or synthetic oil such as an engine lubricant, engine oil, motor oil, or lubricating oil for use in an internal combustion engine, or a lubricant for motor transmissions, gears, or axles **that[**~~which~~**]** through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

HENRY C. A. LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: October 14, 2010
FILED WITH LRC: October 15, 2010 at 11 a.m.
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, email Laura_Lund@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines the terms used in 401 KAR Chapter 52.

(b) The necessity of this administrative regulation: This administrative regulation provides clear and consistent definitions for terms used in 401 KAR Chapter 52.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutory authority for this regulation is given in KRS 224.10-100(5), which provides the cabinet the authority, power, and duty to prevent and control air pollution. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
This administrative regulation assists the public and the regulated community by providing clear and consistent definitions for terms used in 401 KAR Chapter 52.

(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 revises definitions to reflect amendments made to the New Source Review (NSR) program at the federal level. The Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule), published as a final rule on June 3, 2010, amends and creates definitions that significantly impact the Prevention of Significant Deterioration (PSD) and Title V permitting programs. The amendments are to the definitions for “Regulated NSR pollutant”, which includes greenhouse gases (GHGs) as a regulated NSR pollutant under the Clean Air Act; “Major source”, which includes air pollutants subject to regulation; and the inclusion of a definition for “subject to regulation”, which includes the greenhouse gas emission thresholds to trigger Title V permitting. The definition of “regulated air pollutant” was not amended to include GHGs. Therefore, GHGs will not be subject to emissions fees under 401 KAR 50:038; will not be evaluated as insignificant or trivial activities under the Title V permitting program; and will not be subject to state-origin permitting or registration for GHG emission alone. This regulation is also being amended to conform to KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The definition amendments are necessary at the state level to ensure consistency between state and federal programs. The Tailoring Rule establishes January 2, 2011, as the trigger date for GHGs to become regulated. The U.S. EPA found Kentucky’s State Implementation Plan (SIP) deficient on September 2, 2010 (75 FR 53892) because it was determined the Kentucky does not have authority to issue PSD permits for GHGs. If Kentucky’s GHG SIP revision is not in place by March 31, 2011, the Commonwealth will become subject to the Federal Implementation Plan, which was also issued on September 2, 2010 (75 FR 53883). Serious consequences of a FIP include loss of PSD and Title V program approvals and loss of federal highway funds. EPA clearly states their intent in the preamble to SIP call: “For any state that lacks the ability to issue PSD or Title V permits for GHG emissions sources consistent with the final rule, we [EPA] intend to undertake a separate action to call for revisions to these programs. We [EPA] also intend to move quickly to impose a FIP for PSD through 40 C.F.R. 52.21, and use our federal Title V authority to ensure that GHG sources will be permitted consistent with the final rule.” This amendment also clarifies that small businesses will not be regulated solely because of their greenhouse gas emissions by tailoring the threshold limits.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment maintains consistency with corresponding federal definitions affecting Kentucky’s PSD and Title V permitting programs.

(d) How the amendment will assist in the effective administration of statutes: This amendment will provide clear and consistent definitions of terms used in 401 KAR Chapter 52 to prevent and control air pollution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendments to this administrative regulation affects any facility with the capacity to emit greenhouse gases at or above the thresholds specified in the GHG Tailoring Rule. This

includes PSD and Title V sources of greenhouse gas emissions but does not affect smaller emitters of greenhouse gases. EPA has estimated that without the Tailoring Rule there would be 82,000 permitting actions nationwide per year necessary to address greenhouse gas emissions, but with the implementation of the rule that number is reduced to 1,600 nationwide. The Division for Air Quality has estimated this regulation amendment to affect 30 – 40 permitting actions per year in Kentucky. If these amendments are not made, Kentucky's permitting authority for these sources will become void.

(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: Amendments to the current regulation will include the regulation of greenhouse gas emissions. For those sources emitting at or above the major source threshold for greenhouse gas emissions, new permits will have to be issued.

(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: Sources permitted under the Title V program will have to submit a permit application identifying and reporting the emissions but there will be no new requirements or standards imposed on the source. Sources permitted under the PSD program will have to submit a permit application including Best Available Control Technology (BACT) review for greenhouse gas emissions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no emission fees associated with the regulation of greenhouse gas emissions. The emission fee requirements of 401 KAR 50:038 do not apply to greenhouse gas emissions or carbon dioxide equivalent at this point. For those sources that must provide a BACT analysis, there is the additional cost to meet the requirements of the BACT determination. As BACT has not yet been established, it is unknown what these costs may be. Additionally, sources required to obtain a new permit will have the expense of completing a permit application. EPA has estimated that a Title V permit application for greenhouse gas sources would cost each source, on average, between $23,200 and $46,400.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These major sources will remain in compliance with state and federal regulations.

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

(a) Initially: The inclusion of greenhouse gases in stationary source permits will require the Division for Air Quality to expand staff to review the increased permit load and inspect changes made to sources as a result of this regulation.

(b) On a continuing basis: The cabinet must maintain the additional staff in order to handle the increase in permit issuance. EPA has estimated that a Title V permit application for greenhouse gas sources would cost a permitting authority, on average, between $9,844 and $19,688 to process each source permit.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any additional expense incurred by the Division for Air Quality to regulate greenhouse gas emissions would be paid for through current agency funds. The cabinet is not requesting additional general funds for the implementation and enforcement of the regulation. With this promulgation, there will be no emissions fees for GHG emissions. In Phase I of the federal mandate, there are no additional emission fees associated with GHG emissions. However, sources that are brought under PSD or Title V permitting during Phases II and III of the federal mandate solely because of GHG emissions will be subject to Title V emission fees for particulate matter, SO_2, NOx, and VOC emissions.

(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 cabinet is not requesting additional general funds for the implementation of this administrative regulation. However, Title V emission fees may be impacted by the implementation of this administrative regulation, as stated above in paragraph 6.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish fees, but as stated above in paragraphs (6) and (7), Title V emission fees may be impacted.

(9) TIERING: Is tiering applied? Yes. The Tailoring Rule amends the threshold of greenhouse gas emission levels subject to regulation. This tiering revision was necessary to prevent small businesses and individuals from becoming subject to permitting requirements solely due to greenhouse gas emissions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. As a SIP-approved state for the PSD program under 40 C.F.R. 51.166, recent changes in the federal PSD/NSR and Title V programs make it necessary to revise the regulation in order to maintain federal approvability. Failure to do so will result in a Federal Implementation Plan.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

3. Minimum or uniform standards contained in the federal mandate. Changes in the federal definitions for this program necessitate amendments in the state definitions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The definitions contained in this administrative regulation are not more stringent or otherwise different than the corresponding federal definitions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Division for Air Quality as the applicability of other administrative regulations is altered. Any state or local government that emits greenhouse gases in the thresholds subject to the PSD or Title V permitting programs would be required to obtain a permit from the Division for Air Quality.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(5), (26); 42 U.S.C. 7401, 7410, 7471, 7607; 40 C.F.R. 51.166.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue, but Title V fees may be impacted by the implementation of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue, but Title V fees may be impacted by the implementation of this regulation.

(c) How much will it cost to administer this program for the first year? The U.S. EPA has estimated that it will cost the permitting authority between $9,844 and $19,688 per permit issued, and the Division for Air Quality has estimated 30 - 40 permit actions per year. Therefore, it is estimated that an increase of between $300,000 and $800,000 will be necessary to operate this program.

(d) How much will it cost to administer this program for subsequent years? The U.S. EPA has estimated that it will cost the permitting authority between $9,844 and $19,688 per permit issued, and the Division for Air Quality has estimated 30 - 40 permit actions per year. Therefore, it is estimated that an increase of be-

tween $300,000 and $800,000 will be necessary to operate this program.

Revenue (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvement
(Amended After Comments)

902 KAR 30:001. [~~Kentucky Early Intervention Program~~] Definitions.

RELATES TO: 20 U.S.C. **1431-1444** 1471-1485

STATUTORY AUTHORITY: KRS 194A.050, 200.650-676

NECESSITY, FUNCTION, AND CONFORMITY: [~~The Cabinet for Health Services is directed by~~] KRS 200.650 to 200.676 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulation pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Definitions. (1) "Assessment" means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility in First Steps to identify the child's unique strengths and needs, and the services appropriate to meet those needs; and the resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability.[~~activities completed to develop a service plan for an eligible child and his family;~~]

(2) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is necessary to implement the individualized family service plan;

(3) "Assistive Technology Service" means a service that directly assists the child with a disability in the selection, acquisition, or use of an assistive technology device.

(4) "Child find" is[~~means~~] as defined by[~~in~~] KRS 200.654(3).[~~;~~

~~(4) "Developmental quotient" or "DQ" means a specific designation described in and determined using the examiners manual of a norm-referenced test. It is not an extrapolated score based on a screening test;~~]

(5) "Direct supervision" means the continuous, on-site observation and guidance as activities are implemented with children and families.[~~;~~]

(6) "Disciplines" means those professionals recognized by First Steps to practice in early intervention services.[~~;~~]

(7) "District Early Intervention Committee" or "DEIC" is[~~means as~~] defined by[~~in~~] KRS 200.654(6).[~~;~~]

(8) [~~"District technical assistance team" means a professional and a parent of a child with a disability combined staffing unit for the purpose of providing technical assistance, training, and support to families and providers in the local community;~~

~~(9)~~] "Early intervention services" is[~~means as~~] defined by[~~in~~] KRS 200.654(7).

(9)[~~;~~

~~(10)~~] "Early intervention team" means two (2) or more disciplines providing services to a child and family which employ any one (1) of the team models that include a multidisciplinary team.

(10) "Established risk" means a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.[~~;~~]

(11) "Evaluation" means the use of [~~standardized norm-referenced~~] procedures to determine eligibility for First Steps services.[~~;~~]

(12) "Family centered" means practices that are driven by the families priorities and concerns; support the family's role as[~~the recognition that the family is~~] the constant in a child's life; complement a family's natural activity settings and daily routines, and [~~that services and personnel must~~] support, respect, encourage, and enhance the strengths,[~~strength and~~] competence, and confidence of the family.[~~;~~]

(13) [~~"Family directed" means the recognition that a family has choices and that services are provided in accordance with the family's priorities, concerns, and values;~~

~~(14)~~] "First Steps" means Kentucky's early intervention system and is defined by[~~as defined in~~] KRS 200.654.

(14) "Homeless child" is defined by Pub.L. 107-110 Section 725(2) and (6) of the McKinney-Vento Homeless Assistance Act.[~~;~~]

(15) "Interdisciplinary team" means professionals of one (1) or more disciplines working together with an integrated approach to[~~cooperatively in~~] both planning and delivering services to the eligible child in accordance with the IFSP. [~~Emphasis is upon teamwork and interaction among team members who help and rely upon each other to provide well-coordinated services, although each discipline ultimately delivers the services in its own domain.~~]

(16) "Image Consistency Kit" means the guidelines developed by the Interagency Coordinating Council Public Awareness committee for the purpose of ensuring that any use of the First Steps logo and other public awareness materials shall be consistent and in conformity with exact specifications set forth by the committee.[~~;~~]

(17) "Indirect supervision" means the regular, periodic, on-site observation and guidance as activities are implemented with children and families.[~~;~~]

(18) "Individualized family service[~~services~~] plan" or "IFSP" is[~~means as~~] defined by[~~in~~] KRS 200.654(9).[~~;~~]

(19) "Kentucky High Risk Hearing Registry" is[~~means as~~] defined by[~~in~~] KRS 213.046**(16)**.[~~;~~]

(20) "Mentorship" is[~~means~~] a limited period of one (1) year of indirect supervision.[~~;~~]

(21) "Multidisciplinary team" is[~~means as~~] defined by[~~in~~] KRS 200.654(11).[~~;~~]

(22) "Natural environments" means settings, such as the home and the community, in which the child's age peers who have no disability normally participate.[~~;~~]

(23) "Parent" means:

(a) A natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by state law from serving as a parent);

(b) A guardian (but not the state if the child is a ward of the state);

(c) An individual acting in the place of a natural or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(d) Except as used in sections 615(b)(2) and 639(a)(5) of Pub.L. 108-446, an individual assigned under either of those sections to be a surrogate parent.

(24) "Period of eligibility" means the time from referral to First Steps to termination of services due to:

(a) Failure to meet initial program eligibility requirements;

(b) Attainment of age three (3);

(c) Documented refusal of service by parent or legal guardian inclusive of disappearance;

(d) Change of residence to another[~~out of~~] state.

(25)[~~;~~

~~(24)~~] "Point of entry" or "POE" is[~~means as~~] defined by[~~in~~] KRS 200.654(12) and is also called the local lead agency;

(26)[~~(25)~~] "Prematurity" means[~~shall mean~~] a gestational age, at birth, of less than thirty-seven (37) weeks.

(27)[~~;~~

~~(26)~~] "Primary referral source" means those in the community who have the greatest opportunity, by virtue of their work, their relationship to children [~~of this age,~~] or their special knowledge[~~,~~] to refer a child to First Steps.

(28) "Primary service provider" means one (1) professional who is a member of the IFSP team selected as the team lead who provides regular support to the family.

(29)[~~;~~

~~(27) "Primary service coordinator" or "PSC" means the person responsible for coordination of services after the POE initial service~~

~~coordinator has completed his responsibilities for IFSP development;~~

~~(28)~~] "Provider action" means actions or decisions by the First Steps staff, and actions or decisions made by service providers relating to the identification, evaluation, and placement of the child or the provision[~~provisions~~] of appropriate early intervention services.

(30)[~~(29)~~] "Qualified service provider" is[~~means as~~] defined by[~~in~~] KRS 200.654(13).

(31) "Referral" means a child identified between birth and three (3) years of age who is a Kentucky resident or a homeless child within the boundaries of the Commonwealth and is suspected of having an established risk diagnosis or a developmental delay as confirmed by the cabinet approved screening protocol.

(32) "State Technical Assistance Team" means a team consisting of early intervention professionals and at least one (1) parent of a child with a disability who assist the State Lead Agency by providing technical assistance, training, and support to the Points of Entry and families to assure that the early intervention system is meeting performance indicators and the needs of families.

(33) "State Lead Agency" means the designated staff in the Department for Public Health who are responsible for implementing the First Steps Program in accordance with 34 C.F.R. 303 Part C of Individuals with Disabilities Education Improvement Act (IDEA) and KRS 200.650 to 200.676.

(34)[~~; (30) "Teratogen" means an agent causing fetal malformations.~~

~~(31)~~] "Transdisciplinary team" means professionals from various disciplines working together cooperatively by educating one another in the skills and practices of their disciplines and a commitment to work together across traditional discipline boundaries being consistent with the training and expertise of the individual team members.

(35) "Ward of the state" means a child who**[**~~, as determined by the state where the child resides,~~**]** is a foster child or is in the custody of a public child welfare agency **because all persons with parental rights to the child have had their rights terminated voluntarily or involuntarily**, but does not include a foster child who has a foster parent who meets the definition of a parent in subsection (23) of this section.

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides definitions unique to the early intervention system as defined by Pub.L. 108-446, the Individuals with Disabilities Education Improvement Act.

(b) The necessity of this administrative regulation: 902 KAR 30:001 is necessary to define specific terminology used in the early intervention system.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650 requires that the Cabinet for Health and Family Services be in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds the following definitions: assistive technology devices and services, established risk, homeless child, parent, primary service provider, referral, and ward of the state. The amendment modifies the definitions of interdisciplinary team and regional technical assistance team. The amendment deletes the following definitions: developmental quotient, family directed, primary service coordinator, and teratogen.

(b) The necessity of the amendment to this administrative regulation: Assistive technology devices and services (34 C.F.R.303.12 (d) 1 and (34 C.F.R. 303.12 (d) (1) (i-vi) respectively), homeless child, parent (34 C.F.R. 303.19; Pub.L. 107-110 Section 725 (2) and (6)) and ward of state were added for compliance with federal funds in order to receive federal funding. The definition of referral was added to provide clarification of when the federally-mandated timeline begins. Some terminology was added for clarity and guidance. Developmental quotient, family directed, primary service coordinator, and teratogen were removed because these are terms no longer used in the early intervention system.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650(6) requires compliance with federal law as it pertains to services for infants and toddlers with disabilities and their families.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will continue to provide early intervention services as they currently practice. Individuals who previously performed the duties of Primary Service Coordinators have been hired by Points of Entry provider or enrolled in First Steps as another type of qualified providers or left the early intervention service system for employment in another field.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Early intervention providers will be eligible for continued funding and participation in First Steps.

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

(a) Initially: There are no costs to implement this regulation.

(b) On a continuing basis: There are no costs to implement this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

(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 this is an amendment: No increase in fees or funding is necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increase any fees? No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,

service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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 provides clarification of program terms.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no new revenue generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenues generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulations during the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal Statute or regulation constituting the federal mandate. 34 C.F.R. 303 Subpart A-General list the definitions commonly used in early intervention services. As a recipient of federal Part C monies, Kentucky Early Intervention Services is mandated to fully comply with all federal statutes. The changes in the definitions bring KEIS into full compliance with this federal statute and are required for continued receipt of those funds.

2. State compliance standards.KRS 200.650 charges the Cabinet for Health and Family Services and the Department for Public Health to comply with federal law as it pertains to services for infants and toddlers with disabilities and their families.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to mirror the federal language regarding definitions the state will be in full compliance under this part of the federal statute.

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 than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvement
(Amended After Comments)

902 KAR 30:110. [~~Kentucky Early Intervention Program~~] Point of Entry and service coordination.

RELATES TO: KRS 200.650-200.276, 20 U.S.C. **1431-1444, 34 C.F.R. Part 303** [~~1471-1485~~]

STATUTORY AUTHORITY: KRS 194A.050, 200.660(8)[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 250.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation sets forth the point of entry and service coordination provisions pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Point of Entry. (1) The point of entry (POE) staff shall coordinate child find efforts with local education agencies in order to insure compliance with child find mandates by each entity; and other state and federal programs serving this population. These include, but are not limited to:

(a) Maternal and child health programs;

(b) Early and periodic screenings, diagnosis, and treatment (EPSDT) programs;

(c) Head Start;

(d) Homeless shelters;

(e) Supplemental Security Income (SSI) programs; [~~and~~]

(f) **The local Department for Community Based Services (DCBS office for cases with a sustained or negligent complaint; and**

(g) Programs authorized through 42 U.S.C 15001 to 15009, the Developmental Disabilities Assistance and Bill of Rights Act.

(2) The POE staff shall develop a child find activity plan approved by the Part C Coordinator to be conducted in each district.

(3) The POE staff shall maintain accessibility and provide public awareness activities in each district as required by the cabinet.

(4) The POE staff shall maintain communication with the District Early Intervention Council (DEIC), state lead agency, and state technical assistance staff on matters of child find, service options, and other issues relevant to the First Steps Program.

(5) The POE staff shall accept all inquiries for First Steps services to determine eligibility for programs.

(a) Upon receiving a telephone or written inquiry, POE staff shall determine if:

1. The family is aware that an inquiry is being made; and

2. The referral is appropriate based on:

a. The child's age shall be between birth and three (3) years old;

b. The family's residence within the assigned district or that the family is homeless; and

c. An established risk diagnosis or a developmental concern that is confirmed by administration of the cabinet approved screening protocol.

(b) If the initial screening finds the referral to be inappropriate, the POE shall:

1. Provide to the referral source appropriate resources for the child and family for services that meet that child's needs. These resources may include:

a. Public schools;

b. The Department for Community Based Services;

c. Medical services; or

d. Other appropriate community services; and

e. Another POE if residency alone is the reason for an inappropriate referral.

2. Provide a parent with notice of action refused in accordance with 34 C.F.R. 303.403(b).

(c) If it is determined that the referral is appropriate, POE staff shall contact the family by telephone or letter within five (5) working days of receipt of referral.

(d) If the family is interested in early intervention services, the POE staff shall assign a service coordinator and continue with the intake process.

(e) If a family is not interested in participating, the family shall be provided contact information for the POE and other community resources. The POE staff shall:

1. Document in the child's record the refusal of services; and

2. Send a letter to the referral source explaining refusal of services by the family.

(f) If efforts to contact the family by telephone or in writing fail, the POE staff shall send a follow-up letter to the family within ten (10) working days of the referral.

(g) Within fifteen (15) working days, the POE staff shall send, in writing, an acknowledgment to the referral source that the referral was received and the status of the processing of the referral if known at that time.

(6) All children who are two (2) years and ten and one-half (10 1/2) months old to age three (3) years when first referred to First Steps shall not be eligible for First Steps. The POE shall notify the parent or guardian in writing that due to the child's age at the time of referral, the First Steps Program will not provide an evaluation to determine eligibility for First Steps, but will connect the parent or guardian with the local education agency, or other community resource.

(7) The POE staff shall maintain a complete record on all children referred through the POE and provide data to the state lead agency as requested.

(8) The POE staff shall provide a written monthly data report as defined by the state lead agency to the DEIC.

(9) The POE staff shall collect and maintain the District Service Provider Directory and shall provide information to the cabinet on a regular basis.

Section 2. Service Coordination. (1) The service coordinator shall:

(a) Serve as the main point of contact in helping families obtain the services and assistance they need;

(b) Complete the core service coordination training prior to the initiation of service delivery; and

(c) Complete all training as required by the Cabinet for Health and Family Services within the specified timeline.

(2) During the initial visit to the family, the service coordinator shall:

(a) Identify the purpose of the visit;

(b) Explain the First Steps service delivery system;

(c) Explain the family rights by reviewing the Family Rights Handbook and the statement of assurances;

(d) Obtain the signature of a parent or guardian on the statement of assurances;

(e) Request the release of information from a parent or guardian for medical or developmental information, risk indicators, other diagnostic, or hearing test results;

(f) Determine the willingness of the family to participate in First Steps services or refusal of services;

(g) Interview family and other individuals identified by the parents who are significant in the child's life and document findings relating to:

1. The child's developmental status;

2. The pregnancy, birth, and health information;

3. Social relationships; and

4. Context for learning, including the family's history, resources, priorities, and concerns.

(h) Conduct the routines based interview to determine daily routines and activities, the family's satisfaction level with these routines, and the family's desired outcomes.

(i) Determine the next action needed with the family to determine eligibility of the child;

(j) Discuss evaluation and service options;

(k) Establish the potential date for developing an Individual Family Service Plan (IFSP);

(l) Discuss the role of the service coordinator; and

(m) Collect insurance information and data necessary for billing.

(3) The service coordinator must:

(a) Notify parents, in accordance with the parental prior notice requirements of 34 C.F.R. 303.403, and all the IFSP team members in writing of the initial and annual Individual Family Service Plan (IFSP), six (6) month review, and any other IFSP team meeting or the transition conference date and location no less than **seven (7) [**~~fourteen (14)~~**]** calendar days prior to the IFSP, review, or transition conference date.

1. If there is a cancellation of an IFSP meeting, notify the IFSP members in writing of the rescheduling of the IFSP meeting within five (5) working days of the cancelled meeting;

(b) Facilitate the initial, annual and, six (6) month review IFSP meetings and IFSP meetings requested to address revisions; and

1. Enter all IFSP data into the First Steps data management system;

2. Finalize the plan within five (5) days of the date of the meeting;

3. Provide a written copy to the parent or guardian within five (5) days of the meeting and provide copies to persons identified and consented to by the family;

4. Refer the family to appropriate agencies for service identified on the IFSP in accordance with 902 KAR 30:130 Section 2**(5)[**~~(7)~~**]**(i); and

5. Ensure that transition steps and services are discussed with the family during each IFSP meeting.

(4) The service coordinator shall inform the family of their rights and procedural safeguards by:

(a) Summarizing the family rights handbook at the initial IFSP, at each subsequent IFSP, and at any time the family requests;

(b) Familiarizing the family with the procedural safeguards and due process rules, and ensuring that the family reviews and signs the statement of assurances found in the Family Rights Handbook at every IFSP review;

(c) Ensuring that all materials are given to the family in a format they can understand in their native language; and

(d) Assisting the family, at their request, with resolving conflicts among service providers.

(5) The service coordinator shall assist the family in identifying available service providers by:

(a) Keeping current on all available services in the district, including recent rules regarding funding sources;

(b) Having available to the families a list of all eligible First Steps services providers in each district. If the family chooses a service provider outside the First Steps approved provider list, the service coordinator shall inform the family that the provider is not approved through First Steps and may result in a cost to the family;

(c) Making the family aware of community activities that would benefit from their participation, such as becoming a member of the District Early Intervention Committee; and

(d) Assisting the Point Of Entry (POE) in establishing new service providers by consistently educating the public on the benefits of early identification and intervention.

(6)The service coordinator shall ensure that service coordination is available to families during normal business hours and at the family's request.

(7) The service coordinator shall contact the child's family at a minimum of one (1) time per plan to discuss service coordination needs, unless otherwise stipulated in the IFSP.

(8) The service coordinator shall give the family a business address and phone number and any other information needed to contact the service coordinator.

(9) If a family desires a change in their service coordinator, they shall contact the POE and the POE shall seek to resolve the situation.

(10) The service coordinator shall facilitate the development of a transition plan by:

(a) Knowing the transition procedures as outlined in 902 KAR 30:130, **Section 2(8)(k),** and ensuring that all potential agencies and programs that could provide service to a particular child after the age of three (3) are included when introducing the parents to future program possibilities;

(b) Holding a transition conference at least ninety (90) days

and, at the discretion of all parties, not more than nine (9) months prior to the child's third birthday. The transition conference shall involve the family, IFSP team, the Part B local school district representative, and staff from potential next placement options; and

(c) Including at least one transition outcome as a part of every IFSP that is supported by steps.

(11) The service coordinator shall ensure that all contacts with the family or other service providers are documented in the child's record in the First Steps data management system. This documentation shall occur within seven (7) days of the date of service and include:

(a) The date of contact;

(b) Amount of time spent;

(c) Reason for contact;

(d) Type of contact whether by telephone or face to face;

(e) Result of contact; and

(f) Plan for further action.

(12) Service coordinator shall document notes on the First Steps data management system all contacts attempted but not made, and the reason if services were not delivered in a timely manner.

(13) The service coordinator shall encourage the family to access all services identified on the individualized family service plan.

(14) If the family wants to voluntarily terminate a service or all services, the service coordinator shall:

(a) Document in the child's record which services are ending and the date of termination; and

(b) Send a follow-up letter that meets the requirements for prior written notice as specified in 34 C.F.R. 303.403 to the family which includes what services are terminating, and the date services will terminate, within seven (7) working days after notice from the family of their choice to end services.

(15) If the family is absent from a scheduled service with no prior notice for at least three (3) consecutive visits, the service provider shall notify the service coordinator within seven (7) working days after the last absence. If the service coordinator receives notice of no show from a provider, the service coordinator shall:

(a) Document the service provider's contact and try to make contact with the family to discuss the circumstances. The service coordinator shall:

1. If contact is made, **notify the provider(s) [**~~send a letter~~**]** within seven (7) working days **of [**~~to the providers with~~**]** the result of the discussion; or

2. If no contact is made, send the family a letter within seven (7) working days:

a. Requesting direction as to the choice of the family in continuation of services;

b. Stating that the service will be discontinued until a choice is made by the family by contacting the service coordinator; and

c. Stating that if no contact is made by the family, services will be terminated fifteen (15) working days from the date of the letter; and

(b) Notify the service provider, in writing, if services are terminated and the date of termination.

(16) The service coordinator shall be responsible for securing any release of information necessary to send or secure information, upon request from other service providers, including non First Steps providers involved in the care of the child.

(17)The service coordinator shall provide data to the cabinet upon request.

(18) The service coordinator shall limit practice in First Steps to service coordination only.

Section 3. Determination of Child's Hearing Status. (1) All children referred to First Steps will have a verbal risk assessment performed for suspected hearing impairments prior to the initial IFSP meeting. For a birth to three (3) year old child who:

(a) Is "at risk" as indicated in Kentucky CHILD and confirmed by the Early Hearing Detection and Intervention Data Base and the "at risk" indicator is the only reason they were referred to First Steps, and no audiological evaluation has been performed, the family or guardian shall be notified to contact the child's primary health care provider, pediatrician, or an Approved Infant Audiologic Assessment Center as specified by KRS 211.647 and 216.2970 for an audiological evaluation to determine hearing status.

(b) Is suspected of having a hearing problem, but not suspected of having any developmental problems, the family or guardian shall be notified to contact the child's primary health care provider, pediatrician, or an Approved Infant Audiologic Assessment Center as specified by KRS 211.647 and 216.2970 for an audiological evaluation to determine hearing status.

(c) Has a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an "established risk" diagnosis and be eligible for First Steps services and the referral process shall continue.

(d) If a birth to three (3) year old child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and suspected of having delays in developmental areas, POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation at an Approved Infant Audiologic Assessment Center as specified by KRS 211.647 and 216.2970.

Section 4. Incorporation by Reference. The following materials are incorporated by reference:

(1) "Family Rights Handbook", July 2010 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[~~The point of entry (POE) staff shall coordinate child-find efforts with local education agencies in order to insure compliance with child find mandates with each party.~~

~~(2) The POE staff shall coordinate child find efforts with other state and federal programs serving this population, including maternal and child health programs, early and periodic screening, diagonal sis, and treatment programs, Head Start, Supplemental Security Income Program, and programs authorized through 42 U.S.C. 15001 to 15009, the Developmental Disabilities Assistance and Bill of Rights Act.~~

~~(3) The POE staff shall develop a child find activity plan to be conducted in each district that includes:~~

~~(a) Completing a minimum of two (2) face to face contacts per month to potential referral sources in the district to explain First Steps services.~~

~~(b) Utilizing the materials developed by the Interagency Coordinating Council Public Awareness Committee by making them available to the community upon request in cooperation with the district technical assistance team and the district early intervention committee (DEIC).~~

~~(4) The POE staff shall maintain accessibility and provide public awareness activities in each district by:~~

~~(a) Having a district toll free telephone number;~~

~~(b) Having a dedicated local telephone number to be answered by person or machine twenty four (24) hours a day, seven (7) days a week as First Steps; and~~

~~(c) Utilizing the Image Consistency Kit developed by the Interagency Coordinating Council Public Awareness Committee.~~

~~(5) The POE staff shall maintain communication with the DEIC, district technical assistance team and lead agency on matters of child find, service options and other issues relevant to the First Steps Program, by completing the following activities:~~

~~(a) Presenting a report at each DEIC meeting that includes the following information:~~

~~1. Number of referrals and referral sources since last DEIC meeting;~~

~~2. List of current service providers including deletions and additions from last meeting;~~

~~3. Report on identified gaps related to services and location; and~~

~~4. A highlight of the month's activities that include the public awareness activities; and~~

~~(b) Soliciting advice from the DEIC, district technical assistance teams, and lead agency on child find, service options and other issues relevant to the First Steps Program.~~

~~(6) The POE staff shall act on all referrals for First Steps services.~~

~~(a) Upon receiving a telephone or written referral, POE staff~~

shall:

1. Determine if the family is aware that a referral is being made; and

2. Do an initial screening to determine if the referral is appropriate based on:

a. Establishing that the child's age is between birth and three (3) years old;

b. Ensuring the family's residence is within the assigned district; and

c. Confirming that there is a developmental concern or a suspected established risk diagnosis.

(b) If the initial screening finds the referral to be inappropriate, the POE shall give the referral source the appropriate resource to refer the child and family to the services that meet that child's needs. These resources include:

1. Public schools;

2. The Department for Community Based Services;

3. Medical services; or

4. Another POE.

(c) If it is determined that the referral, is appropriate, POE staff shall contact the family by telephone or letter within five (5) working days for the purpose of:

1. Briefly informing them of First Steps' services;

2. Advising them that all services are voluntary; and

3. Ascertaining whether the family would like more information and an initial visit scheduled; and

4. Administer the Department for Public Health approved screening test.

(d) If a family is interested, the POE staff shall schedule a visit and send the family a letter to confirm the date, time and location of the visit.

(e) If a family is not interested, the family shall be informed by the POE staff that they can contact the POE at any time to reinstate the referral and the POE staff shall:

1. Document in the child's record, the refusal of services; and

2. Send a letter to the referral source explaining refusal of services by the family.

(f) If efforts to contact the family by telephone and in writing fail, in order to bring closure to the referral the POE staff shall send a follow-up letter within ten (10) working days of the referral encouraging the family to contact the POE at anytime to:

1. Initiate services; or

2. To ask further questions.

(g) Within fifteen (15) working days, the POE staff shall send, in writing, an acknowledgment to the referral source that the referral was received and the status of the processing of the referral, if known at the time.

(7) At the initial visit to the family, the POE staff shall:

(a) Identify the purpose of the visit;

(b) Explain the First Steps services;

(c) Explain the family rights by giving the family the "Family Rights Handbook" and review the statement of assurances;

(d) Obtain the signature of a parent on the statement of assurance;

(e) Obtain release of information for medical or developmental information from parent;

(f) Determine the willingness to participate in First Steps services or refusal of services;

(g) Interview family and other individuals identified by the parents who are significant in the child's life and record findings to help record the child's developmental status, social relationships and contexts for learning, including the family's history, resources, priori-ties, concerns, patterns, daily routines and activities;

(h) Determine the next action needed with the family to the determine eligibility of the child;

(i) Discuss evaluation and service options that include:

1. Family convenience and preference;

2. Funding sources; and

3. Natural environments;

(j) Establish the potential date for developing an Individualized Family Service Plan (IFSP);

(k) Discuss options for a primary service coordinator; and

(l) Collect data necessary for billing.

(8) All children referred to First Steps because of suspected developmental delay or established risk condition shall have the hearing checklist completed prior to the initial IFSP meeting.

(9) The POE staff shall use the following to assist in the determination of hearing status:

(a) If the referral is a birth to three (3) year old child who is "at risk" as indicated on the Kentucky High Risk Hearing Registry and the "at risk" indicator is the only reason they were referred to First Steps, and no audiological screen has been done, the child and family shall be notified to contact their pediatrician or a clinic for an audiological screen to determine hearing status.

(b) If the referral is a birth to three (3) year old child who is suspected of having a hearing problem, but not suspected of having any developmental problems, the family shall be notified to contact their pediatrician or a clinic for an audiological screen to determine hearing status.

(c) If the referral is a birth to three (3) year old child with a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an "established risk" diagnosis and be eligible for First Steps services and the referral process shall continue.

(d) If a birth to three (3) year old child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and suspected of having delays in developmental areas, POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation.

(e) If a birth to three (3) year old child is referred because of suspected developmental delay or established risk condition, but no apparent hearing problems, the POE shall complete the hearing checklist prior to the IFSP meeting.

(10) POE staff shall coordinate the evaluation process for eligibility determination within the federally mandated time line of forty-five (45) days from receipt of the referral.

The POE staff shall:

(a) Gather existing documentation that will be used to determine eligibility; and

(b) ensure that all releases are completed and on file.

(11) The POE staff shall make appropriate referrals to secure needed evaluations of the child's medical and developmental status.

(12) The POE staff shall ensure that referrals for needed assessments are made, the assessments are completed and that those reports shall be made available prior to the initial IFSP.

(a) The POE staff shall make the appropriate referrals for needed assessments prior to the initial IFSP.

(b) The POE staff shall request copies of the completed assessment reports to be included in the child's record and used in the development of initial IFSP.

(c) The POE staff shall send all future assessment reports to the primary service coordinator.

(13) The POE staff shall coordinate and ensure completion of the initial individualized family service plan (IFSP) meeting within the federally mandated time line of forty-five (45) calendar days from receipt of referral.

(a) The POE staff shall assist the family in identifying the IFSP team members and discuss a potential primary service coordinator.

(b) Once a potential primary service coordinator has been suggested, the POE staff shall contact that person and confirm his willingness to function as the primary service coordinator.

(c) After releases of information signed by the parent have been obtained, the POE staff shall send copies of the following information to the requested primary service coordinator:

1. Initial referral information;

2. Developmental and social history;

3. Any available evaluation reports; and

4. Any available assessment reports.

(d) The POE staff shall send notices to all identified IFSP team members of the upcoming IFSP meeting date, time, and location.

(e) If a telephone is available, the POE staff shall call the family at least three (3) working days prior to the IFSP meeting to:

1. Confirm the time and place of the meeting;

2. Determine whether transportation is needed;

3. To reiterate the purpose of meeting; and

4. To answer questions.

(f) If the developmental and medical evaluators, family, and

~~POE agree that the child is not eligible prior to the IFSP meeting, a meeting shall not be held. If any one (1) member disagrees or still has concerns, a meeting shall be held.~~

~~(g) The POE staff shall facilitate the initial IFSP meeting by:~~

~~1. Leading introductions;~~

~~2. Reviewing the purpose of the meeting;~~

~~3. Explaining the family rights and responsibilities for participation, the array of services currently available, and the service delivery approaches which include family centeredness, natural environments and transdiciplinary services; and~~

~~4. Discussing and leading the IFSP team to verify eligibility based on collected documentation.~~

~~a. If the child is not eligible, the POE staff shall discuss other options and make the family aware they can recontact the POE anytime.~~

~~b. If the child is eligible but the family is not interested in services, the POE staff shall document the refusal of services and make the family aware they can recontact the POE any time for reevaluation.~~

~~c. If the child is eligible and the family is interested in services, the POE staff shall:~~

~~(i) Develop an IFSP ensuring that all IFSP components are included; and~~

~~(ii) Introduce the primary service coordinator.~~

~~(h) The POE staff shall ensure that the written IFSP is developed and recorded at the meeting.~~

~~(i) The POE staff shall send the completed IFSP to the family within five (5) working days of the IFSP meeting;~~

~~(j) The POE staff shall, within five (5) working days of the IFSP meeting, make available, through appropriate releases, to the primary service coordinator the following:~~

~~1. The completed IFSP;~~

~~2. Any evaluation reports not previously sent; and~~

~~3. Any assessment reports not previously sent.~~

~~(k) The identified primary service coordinator shall send copies of the IFSP to other IFSP team members and to the parties requested by the family within ten (10) working days of the IFSP meeting.~~

~~(l) The POE staff shall send the necessary documentation of service decisions to the billing agent within five (5) working days after the IFSP meeting.~~

~~(m) The identified primary service coordinator shall be responsible for referrals to services identified on the IFSP.~~

~~(14) The POE staff shall:~~

~~(a) Provide consultation and support to the primary service coordinator as requested;~~

~~(b) Keep on file copies of all IFSP and reviews sent from the primary service coordinator;~~

~~(c) Assist primary service coordinators in transition of children from First Steps services to future services; and~~

~~(d) Track and notify the primary service coordinator that a transition conference shall be completed within the federal time frame of no less than ninety (90) days prior to the child's third (3) birthday by:~~

~~1. Sending notification, no later than the child's 30th month of age, to the primary service coordinator that the transition conference is due and the date by which it shall be held; and~~

~~2. Receiving from the primary service coordinator the revised IFSP which incorporates the transition plan no later than one (1) week, five (5) working days, after the meeting has been held. This plan shall include at least:~~

~~a. Basic demographic information;~~

~~b. A listing of family priorities;~~

~~c. Family resources and concerns; and~~

~~d. Documentation of the transition meeting and outcomes.~~

~~(15) The POE staff shall function as the primary service coordinator to ensure that the transition conference and plan are completed if the primary service coordinator resigns and no other primary service coordinator can be assigned in time, or the referral is received within forty-five (45) days of the child's third birthday.~~

~~(a) The POE staff shall be responsible for knowing the following transition procedure that shall include:~~

~~1. Ensuring all potential agencies and programs that could provide services to a particular child after the age of three (3), are included.~~

~~2. Processing the referrals of all children who are less than the age of two (2) years ten and one-half (10 1/2) months for evaluation and First Steps services.~~

~~(b) For all children who are two (2) years and ten and one-half (10 1/2) months old to age three (3), the POE shall facilitate the transition conference which would include representatives of available next referrals.~~

~~(c) The POE staff shall be responsible for conducting the transition conference and development of the plan when assuming the role of primary service coordinator.~~

~~(16) If the family refuses service coordination, the POE shall coordinate and facilitate all IFSP meetings.~~

~~(17) The POE staff shall maintain a complete record on all children referred through the POE by:~~

~~(a) Keeping on file all records generated by the POE or sent to the POE from all other service providers;~~

~~(b) Ensuring that all POE contacts shall be documented in the child's record;~~

~~(c) Notifying the billing agent of all changes in the status of the child or family within seven (7) working days of notification of changes to the POE or at least every six (6) months in conjunction with IFSP six (6) month reviews; and~~

~~(d) Providing data to the lead agency as requested.~~

~~(18) The POE shall provide a written data report to the DEIC. The POE shall complete the district data report monthly. The information to be included in the report shall be the:~~

~~(a) Number of referrals per quarter;~~

~~(b) Sources of referrals;~~

~~(c) Number of eligible children;~~

~~(d) Eligibility categories and number of children in each category;~~

~~(e) Number of children not eligible;~~

~~(f) Number of children or families refusing services;~~

~~(g) Number of IFSP's completed;~~

~~(h) Number of children who received primary, intensive and tertiary evaluations; and~~

~~(i) Age of each child at the time of referral.~~

~~(19) The POE shall collect and maintain the District Service Provider Directory.~~

~~The POE shall:~~

~~(a) Collect data on all available First Steps service providers, maintain that data, and have the current services in a printable form, upon request from the community; and~~

~~(b) Send a compiled list of changes to their district technical assistance team quarterly.~~

~~Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Hearing Checklist, 1999; and~~

~~(b) Family Rights Handbook, January 2005.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.~~]

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502) 564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance and requirements for the Point of Entry (POE). The Point of Entry is the local lead agency that is responsible for processing all referrals to the Kentucky Early Intervention System and is responsible for ongoing record keeping and service coordination activities.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to service coordinators and other POE staff. Service coordination is the one service all eligible children receive. POE agencies house all service coordinators, providing not only the work environment but also the supervision of service coordinators. The POE agencies are the local lead agency for the Kentucky Early Intervention System and are the agencies that are monitored by the Department for Public Health.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652 (2)-(6) requires that there be an operational early intervention system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change the existing administrative regulation: The amendments to this regulation remove obsolete language and procedures. Additional guidance is provided for clarity.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to fully comply with federal regulations found at 34 C.F.R. 303 and so that regulation reflects current practice and program reorganization.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.650(6) and 200.652(3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: The changes to this regulation will assist the state by creating a more streamlined system that is easier to supervise and monitor as required by 34 C.F.R. 303.501. POEs are the state's local lead agency that serves as the entity to carry out all functions related to serving children and families. Current state performance status reflects the lack of clear lines of supervision with service coordination and other service providers. Program reorganization was implemented to address these weaknesses and thus, state performance will be enhanced by this streamlined chain of responsibility and supervision. Also, regulations will now reflect the current practices and tools (such as the online data/child's record system) thus eliminating confusion between regulation and practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including POE staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The revisions to this administrative regulation do not cost the entities affected by the amended regulations any additional dollars. Program reorganization moved service coordination to a fixed-cost which will result in approximately $1-2 million dollar savings to the state. Changes to assessment represent an elimination of unnecessary and costly requirements, resulting in additional cost reductions to the system as a whole.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system. The level of responsibility and authority of the POE will greatly affect performance improvement and compliance with federal regulations.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No continuing costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal funds and state general funds will be used to implement this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have an estimated $1-2 million savings to the program.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303 outlines the states requirements for implementing

early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.650 to 200.676 charges the Cabinet for Health and Family Services, Department for Public Health to implement early intervention services and comply fully with federal statutes and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky will be in full compliance under this part of the federal statute.

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 than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvement
(Amended After Comments)

902 KAR 30:120. [~~Kentucky Early Intervention Program~~] Evaluation and eligibility.

RELATES TO: KRS 200.654, 34 C.F.R. 303.11, 303.300, 303.322, 20 U.S.C. **1431-1444** **[**~~1471-1476~~**]**

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(7), 200.650-676, 34 C.F.R. 303.322, 20 U.S.C. **1434** **[**~~1474, 1475(a)(10)~~**]**[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726 reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the evaluation,[~~and~~] eligibility, and redetermination of eligibility requirements for First Steps, Kentucky's Early Intervention Program.

Section 1. Eligibility. (1) A child shall be eligible for First Steps service if the child:

(a) Is age birth **up to three (3) [**~~through two (2)~~**]** years;

(b) Is a resident of Kentucky at the time of referral and resides in Kentucky while receiving early intervention services; and

1. Has a documented established risk condition that has a high probability of resulting in developmental delay, or

2. Is determined to have a significant developmental delay based on the evaluation and assessment process.

(2) A determination of initial eligibility, assessments, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral that meets the criteria of subsection (1) of this section.

(3) Eligibility by established risk conditions:

(a) In accordance with KRS 200.654(10)(b), a child meeting the criteria in subsection (1)(a) and (b) of this section with a suspected established risk condition shall be eligible when the diagnosis is confirmed by a physician and documented in the medical records provided to the First Steps Program.

(b) A list of approved established risk diagnoses shall be maintained by the First Steps Program and made available in policies and procedures.

1. A child with an established risk shall have a five (5) area assessment completed by a developmental evaluator using a cabinet-approved criterion referenced assessment instrument in lieu of a primary level evaluation.

2. If the established risk condition relates to hearing loss, the five (5) area assessment shall be performed by a speech therapist or a teacher of the deaf and hard of hearing who is approved as a developmental evaluator.

(4) Eligibility by developmental delay:

(a) A child meeting the criteria in subsection (1)(a) and (b) of this section shall be eligible for First Steps services if the child is determined to have fallen significantly behind in development, based on the evaluation and assessment process, in one (1) or more of the following domains of development:

1. Total cognitive development;

2. Total communication area through speech and language development, which shall include expressive and receptive language;

3. Total physical development including motor development, vision, hearing, and general health status;

4. Total social and emotional development; or

5. Total adaptive skills development; and

(b) Evidence of falling significantly behind in developmental norms shall be determined on a norm referenced test by the child's score that is:

1. Two (2) standard deviations below the mean in one (1) skill area; or

2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(c) If a norm-referenced test reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by subsection (4)(b) of this section:

1. A more in-depth standardized test in that area of development may be administered if the following is evident:

a. The primary level evaluator and a parent or guardian have a concern or suspect that the child's delay may be greater than the testing revealed;

b. A different norm-referenced test tool reveals a standardized score which would meet eligibility criteria; and

c. There is one (1) area of development that is of concern.

2. The results of this alternate testing shall determine the child's eligibility if the standardized scores indicate a delay of greater than two (2) standard deviations.

(5) Eligibility by professional judgment: A child may be determined eligible by informed clinical opinion by the following multidisciplinary evaluation teams of professionals:

(a) An approved neonatal follow-up program team;

(b) An approved intensive level evaluation team; or

(c) The designated record review team, when reviewing for eligibility.

Section 2. Child Evaluation. (1) A child referred to the First Steps Program who meets the criteria in Section 1(1)(a) and (b) of this administrative regulation shall receive an evaluation to determine eligibility if:

(a) There is a suspected developmental delay as confirmed by the cabinet-approved screening protocol; and

(b) The child does not have an established risk diagnosis.

(2) For a child without an established risk diagnosis, the primary level evaluation shall be used to:

(a) Determine eligibility;

(b) Determine developmental status;

(c) Establish the baselines for progress monitoring; and

(d) Make recommendations for the Individual Family Service Plan (IFSP) outcomes.

(3) Primary level evaluations shall include the five (5) developmental areas identified in Section 1(4)(a) of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas and shall include a cabinet-approved criterion referenced assessment instrument. The primary level evaluation shall include:

(a) A medical component completed by a physician or nurse practitioner that includes a:

1. History and physical examination;

2. Hearing and vision screening; and

3. Recent medical evaluation in accordance with the timelines established in Section 2(5) of this administrative regulation.

(b) A developmental component completed by a cabinet-approved primary level evaluator that includes:

1. A review of pertinent health and medical information;

2. Completion of appropriate instrument(s) to determine the child's unique strengths and needs; and

3. A recommendation of eligibility.

(c) Results of the evaluation should be explained to the family.

(d) An evaluation report shall be written in accordance with established timelines and shall be written in clear, concise language that is easily understood by the family.

(4) Child records of evaluations transferred from a developmental evaluator outside the Kentucky Early Intervention System shall be reviewed by the Point of Entry staff and shall be used for eligibility determination if:

(a) The records meet evaluation timelines established in subsection (5) of this section; and

(b) The records contain the developmental evaluation information required by subsection (3)(a) and (b) of this section.

(5) If there is a recent medical or developmental evaluation available, as described in subsection (3)(a) and (b) of this section, it shall be used to determine eligibility if for children:

(a) Under twelve (12) months of age, the evaluation was performed within three (3) months prior to referral to First Steps; or

(b) Twelve (12) months to three (3) years of age, the evaluation was performed within six (6) months prior to referral to First Steps.

(6) A child referred to First Steps program that was born at less than thirty-seven (37) weeks gestational age shall be evaluated and assessed using an adjusted gestational age to correct for prematurity.

(a) For a child who is less than six (6) months corrected age, the primary evaluation shall be done at an approved Intensive Level Clinic and preferably the approved Neonatal Intensive Care Unit follow-up clinic.

(7) If the child does not have an established risk diagnosis and is determined not eligible, the POE staff shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other third-party payors.

(8) A review of the child's First Steps record by the record review team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility for cases which are complex or have contradictory information from testing.

(a) Upon obtaining a written consent by the parent or guardian, a service coordinator shall submit a child's record to the Department for Public Health or the designee for a record review if the child does not meet eligibility guidelines at the primary level, but the primary level evaluator and a parent or guardian have concerns that the child is developing atypically and a determination of eligibility based on professional judgment is needed.

(b) Upon receiving a referral, a record review team shall conduct a record review and issue findings within ten (10) calendar days of receipt of the request.

(9) Should the record review team request an Intensive level clinical evaluation, this shall be conducted by a team of early intervention professionals approved by the Part C Coordinator that shall include the following:

(a) A board certified medical professional with expertise in early childhood development;

(b) A board certified developmental pediatrician;

(c) A pediatrician who has training and experience in the area of early childhood development;

(d) A board certified pediatric psychiatrist; or

(e) A board certified pediatric neurologist; and

(f) One (1) or more developmental professionals identified in 902 KAR 30:150, Section 2(1)(a)-(s).

Section 3. Annual Redetermination of Eligibility. (1) Redeterminations of eligibility shall not be used to address concerns that are medical in nature.

(2) A child shall have continuing program eligibility for First Steps services if the child is under three (3) years old, is a resident of Kentucky, and the result of the most recent semi-annual progress review demonstrates:

(a) An ongoing delay or failure to attain an expected level of development
in one or more developmental areas; and

(b) Continued First Steps services are required in order to support continuing developmental progress by consensus of the IFSP team.

(3) Based on the results of the redetermination of eligibility, the IFSP team shall:

(a) Continue with the same outcomes and services;

(b) Continue with modified outcomes and services; or

(c) Transition the child from First Steps services.

(4) Redetermination of eligibility shall occur at least annually.

(a) The annual redetermination shall be part of the child's ongoing assessment and shall include an assessment in all five (5) areas by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument.

(b) If a person or persons directly involved in conducting the evaluation and assessments are unable to attend an IFSP meeting, arrangements shall be made for their involvement by other means including participating in a telephone conference call, having a representative attend the meeting, or making pertinent records and reports available at the meeting.

Section 4. Incorporation by Reference. (1) "The Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) Periodicity Schedule", August 2003 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Evaluation. (1)(a) A child referred to the First Steps Program shall be initially evaluated to determine eligibility if:~~

~~1.a. The screen indicates a developmental delay; or~~

~~b. The screen does not indicate a delay, but the family still has concerns; and~~

~~2. The child does not have an established risk condition.~~

~~(b) A child with established risk as listed in Section 2(3)(b) of this administrative regulation shall receive a five (5) area assessment done by a primary level evaluator in lieu of a primary level evaluation. If a child is eligible due to an established risk condition of hearing loss, the five (5) area assessment shall be performed by a speech therapist or a teacher of the deaf and hard of hearing who is approved as a primary level evaluator.~~

~~(2)(a) A determination of initial eligibility pursuant to Section 2 of this administrative regulation, assessments in the identified area of delay, in accordance with 911 KAR 2:130, and the initial IFSP team meeting shall occur within forty-five (45) calendar days after a point of entry receives an initial referral.~~

~~(b) If a determination of initial eligibility, assessments and initial IFSP team meeting does not occur within forty-five (45) calendar days due to illness of the child or a request by the parent, the delay circumstances shall be documented.~~

~~(c) If a family is referred for a determination of initial eligibility and the family is under court order or a social services directive to enroll their child in First Steps, the court or social service agency shall be informed within three (3) working days by the initial service coordinator, if the family refuses the determination of eligibility.~~

~~(3) Child records of evaluations transferred from an in-state or out-of-state developmental evaluator shall be reviewed by the initial service coordinator and shall be utilized for eligibility determination if:~~

~~(a) The records meet First Steps evaluation time lines established in subsection (4)(a) of this section; and~~

~~(b) The records contain the developmental evaluation information established in subsection (11)(a) and (b) of this section.~~

~~(4) The primary level evaluation shall be utilized to determine eligibility of children without established risk, developmental status and recommendations for further assessment to determine program planning.~~

~~(a) If there is a previous primary level evaluation available, it shall be used to determine eligibility if:~~

~~1.a. For children under twelve (12) months of age, the evaluation was performed within three (3) months prior to referral to First Steps; or~~

~~b. For children twelve (12) months to three (3) years of age, the evaluation was performed within six (6) months prior to referral to First Steps; and~~

~~2. There is no additional information or the family has not expressed new concerns that would render the previous evaluation no longer valid.~~

(b) If there is a previous primary level evaluation available that was performed within the timeframes established in paragraph (a)1 of this subsection but there are new concerns that render the evaluation no longer valid, the initial service coordinator shall request a new primary level evaluation.

(c) Primary level evaluations shall provide evaluation in the five (5) developmental areas identified in Section 2(1)(c)1 through 5 of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas.

(d) The primary level evaluation shall be provided by:

1. A physician or nurse practitioner; and

2. A primary evaluator approved by the cabinet.

(e) A primary level evaluation shall include:

1. A medical component completed by a physician or a nurse practitioner that shall include:

a. A history and physical examination;

b. A hearing and vision screening; and

c. A child's medical evaluation that shall be current in accordance with the EPSDT Periodicity Schedule; and

2. A developmental component completed by a cabinet-approved primary level evaluator that utilizes norm-referenced standardized instruments, the results of which shall:

a. Include the recommendation of a determination of eligibility or possible referral for a record review; and

b. Be interpreted to the family prior to the discussion required by subsection (5) of this section.

(5)(a) Prior to the initial IFSP team meeting, the initial service coordinator shall contact the family and primary level evaluator to discuss the child's eligibility in accordance with subsection (4)(e)2b of this section. If the child is determined eligible, the service coordinator shall:

1. Make appropriate arrangements to select a primary service coordinator;

2. Arrange assessments in the areas identified in Section 2(1)(c) of this administrative regulation found to be delayed; and

3. Assist the family in selecting service providers in accordance with 911 KAR 2:110. If the child is receiving therapeutic services from a provider outside of the First Steps Program, the service coordinator shall:

a. Invite the current provider to be a part of the IFSP team;

b. Request that the provider supply the team with his assessment and progress reports; and

c. If the current provider does not want to participate, have the First Steps provider consult with the current provider if assessing the area being treated by the current provider.

(b) If the child does not have an established risk condition identified in Section 2(1)(c) of this administrative regulation, and is determined not eligible, the team shall discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other third-party payors.

(6) At the initial IFSP team meeting, the IFSP team shall:

(a) Include the following members at a minimum:

1. The parent of the child;

2. Other family members, as requested by the parent, if feasible to do so;

3. An advocate or person outside of the family, if the family requests that the person participate;

4. The initial service coordinator;

5. The primary service coordinator;

6. A provider who performed an assessment on the child; and

7. If appropriate, a First Steps provider who shall provide services to the child or family;

(b) Verify the child's eligibility;

(c) Review the evaluation information identified in subsection (4) of this section;

(d) Review the assessment reports in accordance with 911 KAR 2:130;

(e) Determine the family's outcomes, strategies and activities to meet those outcomes as determined by the family's priorities and concerns; and

(f) Determine the services the child shall receive in order for the family to learn the strategies and activities identified on the IFSP. This shall include identifying:

1. The discipline;

2. The professional, paraprofessional, or both;

3. The method in which services shall be delivered, such as individual, group, or both;

4. The payor source for the service; and

5. The frequency of the service.

(7)(a) Reevaluations shall be provided if the IFSP team determines a child's eligibility warrants review and the child does not have an established risk condition.

(b) Primary level reevaluations shall not be used to:

1. Address concerns that are medical in nature; or

2. Provide periodic, ongoing follow-up services for post-testing or testing for transition.

(c) Based on the result of the reevaluation or annual evaluation, the IFSP team shall:

1. Continue with the same level of services;

2. Continue with modified services; or

3. Transition the child from First Steps services.

(8) Beginning January 1, 2005, an annual IFSP meeting shall be held in accordance with KRS 200.664(7), to determine continuing program eligibility and the effectiveness of services provided to the child. A delay ranking by developmental domain shall be assigned in the progress review report by each therapeutic interventionist using the delay ranking scale. (9) A review of the child's First Steps record by the Record Review Team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility, medical or mental diagnosis, program planning, or plan evaluation.

(a) Upon obtaining a written consent by the parent, a service coordinator shall submit a child's record to the Department for Public Health for a record review if:

1. A primary evaluator identifies a need for further developmental testing necessary to clarify a diagnosis to further define the child's developmental status in terms of a child's strengths and areas of need;

2. A child does not meet eligibility guidelines at the primary level, but an IFSP team member and the family still have concerns that the child is developing atypically and a determination of eligibility based on professional judgment is needed; or

3. The IFSP team requests an intensive level evaluation for the purposes of obtaining a medical diagnosis or to make specific program planning and evaluation recommendations for the individual child.

(b)1. If a service coordinator sends a child's record for a record review, the following shall be submitted to the Record Review Team, Department for Public Health, at the address indicated by the Department for Public Health:

a. A cover letter from the service coordinator or primary evaluator justifying the referral for a record review;

b. Primary level evaluation information specified in subsection (11) of this section;

c. Available assessment reports required in 911 KAR 2:130;

d. Available IFSPs and amendments;

e. Most recent progress reports from the IFSP team members. Reports older than three (3) months shall include an addendum reflecting current progress;

f. Therapeutic staff notes from the previous two (2) months; and

g. If requesting a record review for a child who is receiving speech therapy, a hearing evaluation performed by an audiologist within six (6) months of the request.

2. The service coordinator requesting the record review shall attempt to procure and submit the following information, if available:

a. Birth records, if neonatal or perinatal complications occurred;

b. General pediatric records from the primary pediatrician;

c. Medical records from hospitalizations; and

d. Records from medical subspecialty consultations, such as neurology, orthopedic, gastroenterology or ophthalmology.

(c)1. Upon receiving a referral, a Record Review Team shall conduct a record review.

2. After conducting the record review, Record Review Team

shall:

a. Determine whether there are at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age;

b. Determine that the child meets or does not meet the eligibility criteria established in Section 2(1) of this administrative regulation; and

c. Provide the IFSP team with recommendations for service planning.

3. If there are at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age, Record Review Team shall:

a. Determine if further developmental testing, diagnostics or additional professional judgment are required in order to adequately ascertain the child's developmental needs; and

b. Refer:

(i) The child for an intensive level evaluation, the third level in the First Steps evaluation system; or

(ii) The family to local community resources.

4. If there are not at least sixty (60) calendar days from the date of the review before the child turns three (3) years of age, Record Review Team shall provide the IFSP team with a recommendation for transition planning.

5. Upon the record review team reviewing the child's record, the team shall provide the family and service coordinator with a letter, within fourteen (14) calendar days of the review, informing them of the information described in this paragraph.

(d) Intensive level evaluations shall be conducted by one (1) or more of the following as determined by the Department for Public Health approved Record Review Team:

1. A board certified developmental pediatrician;

2. A pediatrician who has experience in the area of early childhood development;

3. A pediatric physiatrist;

4. A pediatric neurologist;

5. One (1) or more developmental professionals identified in 911 KAR 2:150, Section 1; or

6. If an IFSP is currently in place, a developmental professional representing at least one (1) discipline that is currently on the IFSP in addition to a professional whose scope of work addresses additional concerns expressed by the Record Review Team.

(10) Family rights shall be respected and procedural safeguards followed in providing evaluation services.

(a) Written parental consent shall be obtained before conducting an evaluation or assessment by the evaluator or assessor respectively.

(b) If a parent or guardian refuses to allow a child to undergo a physical or medical examination for eligibility because of religious beliefs:

1. Documentation shall be obtained in the form of a notarized statement. The notarized statement shall be signed by the parent or guardian to the effect that the physical examination or evaluation is in conflict with the practice of a recognized church or religious denomination to which they belong;

2. If a child is determined to be eligible, First Steps shall provide, at the parent's request, services that do not require, by statute, proper physical or medical evaluations; and

3. The initial service coordinator shall explain to the family that refusal due to religious beliefs may result in a denial of services which require a medical assessment on which to base treatment protocols.

(11) A report shall be written in accordance with the time frames established in paragraph (c)1 of this subsection upon completion of each primary level and intensive level evaluation.

(a) A report resulting from a primary level evaluation or an intensive level evaluation shall include the following components:

1. Date of evaluation;

2. Names of evaluators and those present during the evaluation, professional degree, and discipline;

3. The setting of the evaluation;

4. Name and telephone number of the contact person;

5. Identifying information that includes the:

a. Child's Central Billing and Information System (CBIS) identification number;

b. Child's name and address;

c. Child's chronological age (and gestational age, if prematurely born) at the time of the evaluation;

d. Health of the child during the evaluation;

e. Date of birth;

g. Reason for referral or presenting problems;

6. Tests administered or evaluation procedures utilized and the purpose of the instrument. One (1) method of evaluation shall not be used, but a combination of tests and methods shall be used;

7. Test results and interpretation of strengths and needs of the child;

8.a. Test results reported in standard deviation pursuant to subsection (4)(e)2 of this section; and

b. A rank on the delay ranking scale for each of the five (5) developmental areas identified in Section 2(1)(c)1 through 5 of this administrative regulation;

9. Factors that may have influenced the test conclusion;

10. Eligibility;

11. Developmental status or diagnosis;

12. Suggestions regarding how services may be provided in a natural environment that address the child's holistic needs based on the evaluation;

13. Parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;

14. A narrative description of the five (5) areas of the child's developmental status;

15. Social history;

16. Progress reports, if any, on the submitted information; and

17. A statement that results of the evaluation were discussed with the child's parent.

(b) The report required by paragraph (a) of this subsection shall be written in clear, concise language that is easily understood by the family.

(c)1. The reports and notification of need for further evaluation shall be made available to the current IFSP team and family within fourteen (14) calendar days from the date the evaluator received the complete evaluation referral.

2. In addition to the requirements established in this section, an intensive level evaluation site shall:

a. Provide to the Record Review Team a copy of the evaluation report within fourteen (14) calendar days from the date the evaluator received the evaluation referral; and

b. If an IFSP is currently in place:

(i) Focus recommendations on areas that are specified on the IFSP as being of concern to the family;

(ii) Identify strategies and activities that would help achieve the outcomes identified on the IFSP; and

(iii) Provide suggestions for the discipline most appropriate to transfer the therapeutic skills to the parents.

3. If it is not possible to provide the report and notification required in this paragraph by the established time frame due to illness of the child or a request by the parent, the delay circumstances shall be documented and the report shall be provided within five (5) calendar days of completing the evaluation.

Section 2. Eligibility. (1) Except as provided in subsection (2) or (3) of this section, a child shall be eligible for First Steps services if he is:

(a) Aged birth through two (2) years;

(b) A resident of Kentucky at the time of referral and while receiving a service;

(c) Through the evaluation process determined to have fallen significantly behind developmental norms in the following skill areas:

1. Total cognitive development;

2. Total communication area through speech and language development, which shall include expressive and receptive;

3. Total physical development including growth, vision and hearing;

4. Total social and emotional development; or

5. Total adaptive skills development; and

(d) Significantly behind in developmental norms as evidenced by the child's score being:

1. Two (2) standard deviations below the mean in one (1) skill area; or

2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(2)(a) If a norm-referenced testing reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by subsection (1)(d) of this section, a more in-depth standardized test in that area of development may be administered if the following is evident:

1. The primary level evaluator, service coordinator or the family has a concern or suspects that the child's delay may be greater than the testing revealed;

2. A more sensitive norm-referenced test tool may reveal a standardized score which would meet eligibility criteria; and

3. There is one (1) area of development that is of concern.

(b) Upon completion of the testing required by paragraph (a) of this subsection, the results and information required by Section 1(9)(b) of this administrative regulation shall be submitted by the service coordinator to the record review team for a determination of eligibility.

(3) A child shall be eligible for First Steps services if the child:

(a) Is being cared for by a neonatal follow-up program and its staff determine that the child meets the eligibility requirements established in subsection (1) or (4) of this section; or

(b) In accordance with KRS 200.654(10)(b), has one (1) of the following conditions diagnosed by a physician or advanced registered nurse practitioner (ARNP):

Aase-Smith syndrome
Aase syndrome
Acrocallosal syndrome
Acrodysostosis
Acro-Fronto-Facio-Nasal Dysostosis
Adrenoleukodystrophy
Agenesis of the Corpus Callosum
Agyria
Aicardi syndrome
Alexander's Disease
Alper's syndrome
Amelia
Angelman syndrome
Aniridia
Anophthalmia/Microphthalmia
Antley-Bixler syndrome
Apert syndrome
Arachnoid cyst with neuro-developmental delay
Arhinencephaly
Arthrogryposis
Ataxia
Atelosteogenesis
Autism
Baller-Gerold syndrome
Bannayan-Riley-Ruvalcaba syndrome
Bardet-Biedl syndrome
Bartsocas-Papas syndrome
Beals syndrome (congenital contractural arachnodactyly)
Biotinidase Deficiency
Bixler syndrome
Blackfan-Diamond syndrome
Bobble Head Doll syndrome
Borjeson-Forssman-Lehmann syndrome
Brachial Plexopathy
Brancio-Oto-Renal (BOR) syndrome
Campomelic Dysplasia
Canavan Disease
Carbohydrate Deficient Glycoprotein syndrome
Cardio-Facio-Cutaneous syndrome
Carpenter syndrome
Cataracts - Congenital
Caudal Dysplasia
Cerebro-Costo-Mandibular syndrome
Cerebellar Aplasia/Hypoplasia/Degeneration
Cerebral Atrophy
Cerebral Palsy
Cerebro-oculo-facial-skeletal syndrome
Charge Association
Chediak Higashi syndrome
Chondrodysplasia Punctata
Christian syndrome
Chromosome Abnormality a. unbalanced numerical (autosomal) b. numerical trisomy (chromosomes 1-22) c. sex chromosomes XXX; XXXX; XXXXX; XXXY; XXXXY
CNS Aneurysm with Neuro-Developmental Delay
CNS Tumor with Neuro Developmental Delay
Cockayne syndrome
Coffin Lowry syndrome
Coffin Siris syndrome
Cohen syndrome
Cone Dystrophy
Congenital Cytomegalovirus
Congenital Herpes
Congenital Rubella
Congenital Syphilis
Congenital Toxoplasmosis
Cortical Blindness
Costello syndrome
Cri du chat syndrome
Cryptophthalmos
Cutis Laxa
Cytochrome-c Oxidase Deficiency
Dandy Walker syndrome
DeBarsy syndrome
DeBuquois syndrome
Dejerine-Sottas syndrome
DeLange syndrome
DeSanctis-Cacchione syndrome
Diastrophic Dysplasia
DiGeorge syndrome (22q11.2 deletion)
Distal Arthrogryrosis
Donohue syndrome
Down syndrome
Dubowitz syndrome
Dyggve Melchor-Clausen syndrome
Dyssegmental Dysplasia
Dystonia
EEC (Ectrodactyly-ectodermal dysplasia-clefting) syndrome

~~Encephalocele~~
~~Encephalo-Cranio-Cutaneous syndrome~~
~~Encephalomalacia~~
~~Exencephaly~~
~~Facio-Auriculo-Radial dysplasia~~
~~Facio-Cardio-Renal (Eastman-Bixler) syndrome~~
~~Familial Dysautonomia (Riley-Day syndrome)~~
~~Fanconi Anemia~~
~~Farber syndrome~~
~~Fatty Acid Oxidation Disorder (SCAD, ICAD, LCHAD)~~
~~Femoral Hypoplasia~~
~~Fetal Alcohol syndrome/Effects~~
~~Fetal Dyskinesia~~
~~Fetal Hydantoin syndrome~~
~~Fetal Valproate syndrome~~
~~Fetal Varicella syndrome~~
~~FG syndrome~~
~~Fibrochondrogenesis~~
~~Floating Harbor syndrome~~
~~Fragile X syndrome~~
~~Fretman-Sheldon (Whistling Facies) syndrome~~
~~Fryns syndrome~~
~~Fucosidosis~~
~~Glaucoma - Congenital~~
~~Glutaric Aciduria Type I and II~~
~~Glycogen Storage Disease~~
~~Goldberg-Shprintzen syndrome~~
~~Grebe syndrome~~
~~Hallermann-Streiff syndrome~~
~~Hays-Wells syndrome~~
~~Head Trauma with Neurological Sequelae/Developmental Delay~~
~~Hearing Loss (30dB or greater in better ear as determined by ABR audiometry or audiometric behavioral measurements)~~
~~Hemimegalencephaly~~
~~Hemiplegia/Hemiparesis~~
~~Hemorrhage-Intraventricular Grade III, IV~~
~~Hereditary Sensory & Autonomic Neuropathy~~
~~Hereditary Sensory Motor Neuropathy (Charcot Marie Tooth Disease)~~
~~Herrmann syndrome~~
~~Heterotopias~~
~~Holoprosencephaly (Aprosencephaly~~
~~Holt-Oram syndrome~~
~~Homocystinuria~~
~~Hunter syndrome (MPSII)~~
~~Huntington Disease~~
~~Hurler syndrome (MPSI)~~
~~Hyalanosis~~
~~Hydranencephaly~~
~~Hydrocephalus~~
~~Hyperpipecolic Acidema~~
~~Hypomelanosis of ITO~~
~~Hypophosphotasia-Infantile~~
~~Hypoxic Ischemic encephalopathy~~
~~I-Cell (mucolpidosis II) Disease~~

~~Incontinentia Pigmenti~~
~~Infantile spasms~~
~~Ininencephaly~~
~~Isovaleric Acidemia~~
~~Jarcho-Levin syndrome~~
~~Jervell syndrome~~
~~Johanson-Blizzard syndrome~~
~~Joubert syndrome~~
~~Kabuki syndrome~~
~~KBG syndrome~~
~~Kenny-Caffey syndrome~~
~~Klee Blattschadel~~
~~Klippel-Feil Sequence~~
~~Landau-Kleffner syndrome~~
~~Lange-Nielsen syndrome~~
~~Langer Giedion syndrome~~
~~Larsen syndrome~~
~~Laurin-Sandrow syndrome~~
~~Leber's Amaurosis~~
~~Legal blindness (bilateral visual acuity of 20/200 or worse corrected vision in better eye)~~
~~Leigh Disease~~
~~Lennox-Gastaut syndrome~~
~~Lenz-Majewski syndrome~~
~~Lenz Microophthalmia syndrome~~
~~Levy-Hollister (LADD) syndrome~~
~~Lesch-Nyhan syndrome~~
~~Leukodystrophy~~
~~Lissencephaly~~
~~Lowe syndrome~~
~~Lowry-Maclean syndrome~~
~~Maffucci syndrome~~
~~Mannosidosis~~
~~Maple Syrup Urine Disease~~
~~Marden-Walker syndrome~~
~~Marshall syndrome~~
~~Marshall-Smith syndrome~~
~~Maroteaux-Lamy syndrome (MPS VI)~~
~~Maternal PKU Effects~~
~~Megalencephaly~~
~~MELAS~~
~~Meningocele (cervical)~~
~~MERRF~~
~~Metachromatic Leukodystrophy~~
~~Metatropic Dysplasia~~
~~Methylmalonic Acidemia~~
~~Microcephaly~~
~~Microtia-Bilateral~~
~~Midas syndrome~~
~~Miller (postaxial acrofacial-Dysostosis) syndrome~~
~~Miller-Dieker syndrome~~
~~Mitochondrial Disorder~~
~~Moebius syndrome~~
~~Morquio syndrome (MPS IV)~~
~~Moya-Moya Disease~~

~~Mucolipidosis II, III~~
~~Multiple congenital anomalies (major organ birth defects)~~
~~Multiple Pterygium syndrome~~
~~Muscular Dystrophy~~
~~Myasthenia Gravis - Congenital~~
~~Myelocystocele~~
~~Myopathy - Congenital~~
~~Myotonic Dystrophy~~
~~Nager (Acrofacial Dysostosis) syndrome~~
~~Nance Horan syndrome~~
~~NARP~~
~~Neonatal Meningitis/Encephalitis~~
~~Neuronal Ceroid Lipofuscinoses~~
~~Neuronal Migration Disorder~~
~~Nonketotic Hyperglycinemia~~
~~Noonan syndrome~~
~~Ocular Albinism~~
~~Oculocerebrocutaneous syndrome~~
~~Oculo-Cutaneous Albinism~~
~~Optic Atrophy~~
~~Optic Nerve Hypoplasia~~
~~Oral-Facial-Digital syndrome Type I-VII~~
~~Osteogenesis Imperfecta Type III-IV~~
~~Osteopetrosis (Autosomal Recessive)~~
~~Oto-Palato-Digital Syndrome Type I-II~~
~~Pachygyria~~
~~Pallister Mosaic syndrome~~
~~Pallister-Hall syndrome~~
~~Pelizaeus-Merzbacher Disease~~
~~Pendred's syndrome~~
~~Periventricular Leukomalacia~~
~~Pervasive Developmental Disorder~~
~~Peters Anomaly~~
~~Phocomelia~~
~~Pierre Robin Sequence~~
~~Poland Sequence~~
~~Polymicrogyria~~
~~Popliteal Pterygium syndrome~~
~~Porencephaly~~
~~Prader-Willi syndrome~~
~~Progeria~~
~~Propionic Acidema~~
~~Proteus syndrome~~
~~Pyruvate carboxylase Deficiency~~
~~Pyruvate Dehydrogenase Deficiency~~
~~Radial Aplasia/Hypoplasia~~
~~Refsum Disease~~
~~Retinoblastoma~~
~~Retinoic Acid Embryopathy~~
~~Retinopathy of Prematurity Stages III, IV~~
~~Rett syndrome~~
~~Rickets~~
~~Rieger syndrome~~
~~Roberts SC Phocomelia~~
~~Robinow syndrome~~
~~Rubinstein-Taybi syndrome~~
~~Sanfilippo syndrome (MPS III)~~
~~Schinzel-Giedion syndrome~~
~~Schimmelpenning syndrome (Epidermal Nevus syndrome)~~
~~Schizencephaly~~
~~Schwartz-Jampel syndrome~~
~~Seckel syndrome~~
~~Septo-Optic Dysplasia~~
~~Shaken Baby syndrome~~
~~Short syndrome~~
~~Sialidosis~~
~~Simpson-Golabi-Behmel syndrome~~
~~Sly syndrome (MPS VII)~~
~~Smith-Fineman-Myers syndrome~~
~~Smith-Limitz-Opitz syndrome~~
~~Smith-Magenis syndrome~~
~~Sotos syndrome~~
~~Spina Bifida (Meningomyelocele)~~
~~Spinal Muscular Atrophy~~
~~Spondyloepiphyseal Dysplasia Congenita~~
~~Spondylometaphyseal Dysplasia~~
~~Stroke~~
~~Sturge-Weber syndrome~~
~~TAR (Thrombocytopenia-Absent Radii syndrome)~~
~~Thanatophoric Dysplasia~~
~~Tibial Aplasia (Hypoplasia)~~
~~Toriello-Carey syndrome~~
~~Townes-Brocks syndrome~~
~~Treacher-Collins syndrome~~
~~Trisomy 13~~
~~Trisomy 18~~
~~Tuberous Sclerosis~~
~~Urea Cycle Defect~~
~~Velocardiofacial syndrome (22q11.2 deletion)~~
~~Wildervanck syndrome~~
~~Walker-Warburg syndrome~~
~~Weaver syndrome~~
~~Wiedemann-Rautenstrauch syndrome~~
~~Williams syndrome~~
~~Winchester syndrome~~
~~Wolf Hirschhorn syndrome~~
~~Yunis-Varon syndrome~~
~~Zellweger syndrome~~

~~(4) A child shall have continuing program eligibility for First Steps services if the child is under three (3) years old, is a resident of Kentucky, and the results of the semiannual progress review:~~

~~(a) Meet the initial eligibility requirements of subsections (1) to (3) of this section; or~~

~~(b) Indicate a continued delay on the semiannual progress review's delay ranking scale.~~

~~(5) If a child referred to the First Steps Program was born at less than thirty-seven (37) weeks gestational age, the following shall be considered:~~

~~(a) The chronological age of infants and toddlers who are less than twenty-four (24) months old shall be corrected to account for premature birth. The evaluator shall ensure that the instrument~~

~~being used allows for the adjustment for prematurity. If it does not, another instrument shall be used.~~

~~(b) Correction for prematurity shall not be appropriate for children born prematurely whose chronological age is twenty-four (24) months or greater.~~

~~(c) Documentation of prematurity shall include a physician's or nurse practitioner's written report of gestational age and a brief medical history.~~

~~(d) Evaluation reports on premature infants and toddlers shall include test scores calculated with the use of both corrected and chronological ages.~~

~~Section 3. Incorporation by Reference. (1) The Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) Periodicity Schedule, August 2003 edition, is incorporated by reference.~~

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

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756, ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides requirements to establish eligibility for the Kentucky Early Intervention System. Requirements for child evaluation are also included in this regulation.

(b) The necessity of this administrative regulation: States must establish the specific detail for eligibility to receive early intervention services. While federal statute and regulation describe the mandatory populations of infants and toddlers to be served under Part C of the Individuals with Disabilities Education Improvement Act (Pub.L. 108-446), states set the specific procedures and criteria for eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650-200.676 requires the state to develop and implement a comprehensive, statewide early intervention system that complies with federal statute and regulation. KRS 200.652(2) specifically requires the state to provide assistance and support to the family of an infant or toddler with a disability.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides specific guidance for evaluation and assessment, reflecting current program structure and best practices in the field of early intervention. It also removes obsolete and redundant language. Required federal regulatory language is also added to the administrative regulation. The listing of eligible medical conditions is updated. Criteria for eligibility by developmental delay is unchanged.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to reduce costs for unnecessary evaluations and assessments and to specify procedures for federal requirements for reporting the entry and exit status of all children served by Part C of Pub.L. 108-446. (Federal requirement is found at 34 C.F.R. 303.540.) The amendments reflect implementation and use of the online data/child record system and reorganization of the Point of Entry system.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.650(6) and 200.652(3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statute: The changes to this regulation will assist the state by creating a more streamlined system that is easier to supervise and monitor. The changes to the requirements for evaluation and assessment will allow the state regulations to align with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 200 early intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Early Intervention System currently costs approximately $40 million. The revisions to this administrative regulation will not cost the affected entities any additional dollars. Changes to evaluation and assessment represent an elimination of unnecessary and duplicative testing, resulting in efficiencies to the system as a whole.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinator by providing needed clarity so that they are more effective in their roles within the system. Families will benefit by not undergoing unnecessary and duplicative testing and will be more informed consumers of the public services.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal funds (12%) and 88% state general funds will be used to implement this administrative regulation. No state match is required.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.320 through 303.323 outlines the states responsibilities in indentifying, evaluating and assessing children potentially eligible to receive early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.650 charges the Cabinet for Health and Family Services, Department for Public Health to comply with all federal statutes and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to differentiate the process for eligibility (eligible by developmental delay; eligible by established risk; eligible by informed clinical opinion) Kentucky has streamlined the evaluation and assessment process.

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 than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvement
(Amended After Comments)

902 KAR 30:130. [~~Kentucky Early Intervention Program~~] Assessment, [~~and~~] service planning, and assistive technology.

RELATES TO: KRS 200.660(6), 200.664, 34 C.F.R. 303.322, 303.340-303.346, 20 U.S.C. **1431-1444** [~~1471-1476~~]

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(7), 34 C.F.R. 303.500, 20 U.S.C. **1436** [~~1476~~][~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provisions of assessment and the Individualized Family Service Plans used in First Steps, and the provisions for assistive technology[~~Kentucky's Early Intervention Program~~].

Section 1. Assessment. (1) [~~Initial assessment activities for children without established risk conditions shall occur after the establishment of a child's eligibility for First Steps and prior to the initial IFSP in accordance with 911 KAR 2:120, Section 1.~~

~~(a) An initial assessment shall occur within the areas of development that were determined to be below the normal range, a score greater than -1.0, as identified in the primary level evaluation.~~

~~(b) The following shall complete an assessment:~~

~~1. A discipline most appropriate to assess the area of documented delay and of which the family has the greatest concern; and~~

~~2. The fewest additional disciplines as needed to assess the other areas identified as delayed.~~

~~(2)~~] Assessment shall be an[~~the~~] on-going procedure used by personnel meeting the qualifications established in 902 KAR 30:150[~~911 KAR 2:150~~] throughout the period of a child's eligibility for First Steps. An assessment shall reflect:

(a) The child's unique strengths and needs;

(b) The services appropriate to meet those needs;

(c) The family's resources, priorities and concerns which shall be:

1. Voluntary on the part of the family;

2. Family-directed; and

3. Based on information provided by the family through personal interview; and

(d) The supports and services necessary to enhance the family's capacity to meet the developmental needs of their child.

(2)[~~(3)(a)~~] Assessments shall be ecologically valid and reflect appropriate multisource and multimeasures. One (1) source or one (1) measure shall not be used as the sole criterion for determining an intervention program.

(a) Assessment methods shall include direct assessment and at least one (1) of the following:

1. Observations;[~~, which shall:~~

~~a. Take place over several days if possible;~~

~~b. Occur in natural settings;~~

~~c. Include play and functional activities of the child's day; and~~

~~d. Be recorded in a factual manner;~~]

2. Interview and parent reports; and[~~, which shall:~~

~~a. Involve the use of open-ended questioning after the assessor establishes rapport;~~

~~b. Be provided by parents and other primary caregivers; and~~

~~c. Include the effect and impact of the child's disability on participation in natural environments; and~~]

3. Behavioral checklist and inventories[~~, which shall:~~

~~a. Be completed by caregivers by mail, phone or through face-to-face interview; and~~

~~b. Allow for comparison across settings~~].

(b) Direct assessment shall include one (1) or more instruments that are:

1.[~~That are~~] Appropriate for an infant or toddler and allow[~~that allows~~] for adaptations for a disability as needed; and

2. [~~That are~~] Criterion-referenced, which compares the child's level of development with skills listed in a chronological sequence of typical development.

(3)[~~(4)~~] If, after the initial evaluation and assessments are completed, the IFSP team determines that a subsequent assessment is warranted, the following shall be documented on the IFSP:

(a) The IFSP team reasons for an additional[~~parent has a documented concern that would necessitate another~~] assessment;

(b) Whether[~~Why there is not~~] a current provider on the IFSP team [~~that~~] can assess the area or areas of concern; and

(c) Circumstances relating to[~~What has changed in~~] the child's ability or the family's capacity to address the[~~their~~] child's developmental needs that[~~to~~] warrant the subsequent assessment.

(4)[~~(5)~~] A service coordinator shall obtain a physician's or Advanced Practice Registered Nurse (APRN's)[~~ARNP's~~] written approval[~~consent~~] in order to complete an assessment on a child deemed medically fragile. The approval[~~consent~~] shall be specific as to the modifications needed to accommodate the child's medical status[~~skill areas that may be assessed~~].

(5) A formal, direct assessment shall include a written report when performed for initial assessment, the annual assessment, exit progress monitoring, or when authorized by the IFSP in accordance with Section 1(3) of this administrative regulation. This report shall include:[~~(6) An assessment shall have a written report that shall include:~~]

(a) A description of the assessment instruments used in accordance with subsection (2)[~~(3)~~](b) of this section;

(b) A description of the assessment activities and the information obtained, including information gathered from the family;

(c) The child's First Steps identification number;[~~Identifying information, including:~~]

~~1. The central billing and information identification number;~~]

2. [~~The child's Social Security number, if available;~~

~~3.~~] The name of the child;

3.[~~4.~~] The child's age at the date of the assessment;

4.[~~5.~~] The name of the service provider and discipline;

5.[~~6.~~] The date of the assessment;

6.[~~7.~~] The setting of the assessment;

7.[~~8.~~] The state of health of the child during the assessment;

8.[~~9.~~] The parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;

9.[~~10.~~] The medical diagnosis if the child has an established risk condition;

10.[~~11.~~] The formal and informal instruments and assessment methods and activities used; and

11.[~~12.~~] Who was present for the assessment.[~~; and~~

~~13. The signature of the assessor;~~]

(d) A profile of the child's level of performance, in a narrative form which shall indicate:

1. Concerns and priorities;

2. Child's unique strengths, needs, and preferences;

3. Skills achieved since last report, if applicable;

4. Current and emerging skills, including skills performed independently and with assistance; and

5. Recommended direction for[~~of~~] future service delivery; and

(e) Recommendations that address the family's priorities as well as the child's holistic needs based on the review of pertinent medical, social, and developmental information, the evaluation, and the assessment.

(6) A copy of the cabinet-approved criterion referenced assessment protocol shall be submitted electronically to the data collection site designated by the state lead agency within ten (10) working days of the completion of the assessment.[~~Suggestions for strategies, materials, settings, equipment or adaptations that shall support the child's development in natural environments; and~~

~~(f) Information that shall be helpful to the family and other providers in building on the team's focus for the child and family.~~]

(7)(a) The initial and other formal assessments, with written reports,[~~assessment, other formal assessments and their resulting report~~] shall be completed and recorded in the child's record on the online data management system[~~sent to the service coordinator~~] within ten (10) working days of the provider receiving the [~~complete written assessment~~] referral from the POE staff[~~service coordinator. The complete assessment referral request shall include:~~

~~1. The point of entry's intake and child history documentation;~~

~~2. The primary level evaluation report;~~

~~3. The current IFSP; and~~

~~4. Authorizing CBIS billing forms~~].

(b) The provider who performed the assessment shall:

1. Verbally share the assessment report with the family and shall document the contact in the assessor's notes;

2. Provide the written report to the family and the service coordinator within the time frame established in paragraph (a) of this subsection; and

3. Write the report in family-appropriate language that the child's family can easily understand.

(c) If the time frame established in paragraph (a) of this subsection is not met due to illness of the child or a request by the parent, the assessor shall document the delay circumstances in his staff notes with supportive documentation made in the child's record by the service coordinator, and the report shall be provided to the service coordinator within five (5) calendar days of completing the assessment.

(8)(a)[~~Information gathered in the assessment shall be used to determine the service decisions included in the IFSP.~~

~~(9)(a) A child enrolled in First Steps shall receive an assessment as an integral part of service delivery.~~

~~(b) Assessment shall be ongoing in the First Steps Program to ensure concerns and strategies are focused to meet the child and family's current needs.~~] An assessment provided as a general practice of a discipline, not due to the child or family's needs, shall be considered early[~~therapeutic~~] intervention, not an assessment.

(b)[~~(c)~~] Ongoing assessment shall ensure that the IFSP and services are flexible and accessible.

(9)[~~(10)~~] Ten (10) calendar days prior to either the [~~earlier of~~] the annual or six (6) month review of the IFSP or the expiration date of the IFSP, a service provider shall supply progress reports to the primary service coordinator and family.

(10)(a) Within 120 days prior to exiting the First Steps program at age three (3), each child shall receive an assessment in all five (5) developmental domains by the Primary Service Provider (PSP) using a cabinet-approved criterion referenced instrument.

(b) The assessment used for annual redetermination of eligibility may be used to meet this requirement as long as it is completed within 120 days prior to the child's exit from the First Steps Program.

Section 2. Individualized Family Service Plan (IFSP). (1) The signed IFSP shall be a contract between[~~with~~] the family and service providers. A service included on the IFSP shall be provided as authorized, unless the family chooses not to receive the service and this choice is documented in the child's record.

(2) The [~~First Steps~~] IFSP [~~Form~~] shall be [~~used to record the IFSP. Items on the IFSP form shall be~~] completed according to instructions and[~~as instructed on the form. The accompanying initial IFSP documentation~~] shall include:

(a) Appropriate evaluation and assessment reports in accordance with 902 KAR 30:120, Section 2[~~911 KAR 2:120, Section 1 and assessments reports in accordance with this section~~];

(b) A statement of the specific early intervention services, founded on scientifically based research to the extent practicable, necessary to meet the unique needs of the child and the family to achieve the outcomes identified, including the frequency, intensity, and method of delivering the services;[~~Identification of covered services and early intervention approaches;~~]

(c) Service delivery settings; and

(d) A list of IFSP team members and how they participated in the meeting[~~Signed approval by the IFSP team that shall include all individuals identified in the responsible party column of the IFSP including each parent or guardian present~~].

(3)(a) [~~With the exception of a situation established in paragraphs (b) or (c) of this subsection,~~] An authorized IFSP shall be valid for a period not to exceed six (6) months [~~in length~~]. An amendment that occurs to the IFSP shall be valid for the remaining period of the plan.

(b) A parent or guardian's signature on the IFSP shall constitute written consent for early intervention services.

(4) If the family or service provider is unable to keep the scheduled appointment due to illness or any other reason, the service provider shall document the circumstances in staff notes.

(5)[~~If an IFSP is expected to expire within twenty-one (21) calendar days of a child turning age three (3), an extension of the current IFSP shall be granted if the service coordinator provides the payment authorization coordinator at the Department for Public Health office with the following information:~~

~~1. A copy of the transition plan developed at the transition conference held at least ninety (90) calendar days prior to the child~~

~~turning three (3);~~

~~2. A list of who attended the transition conference;~~

~~3. A copy of the IFSP that is expiring or has expired; and~~

~~4. A letter indicating that the:~~

~~a. IFSP team agrees with the decision to extend the IFSP; and~~

~~b. Parents are aware that they have the option of:~~

~~(i) Having an IFSP team meeting; or~~

~~(ii) Waiving their right to meet as an IFSP team.~~

~~(c) If an IFSP team meeting cannot be scheduled and convened prior to the current IFSP expiring, an extension may be authorized if the service coordinator provides the following information to the Department for Public Health office:~~

~~1. A letter requesting an extension of the current IFSP, including the dates the extension is to cover;~~

~~2. A detailed description of attempts made to hold an IFSP meeting and the reasons why the meeting cannot be held prior to the expiration of the current IFSP;~~

~~3. The scheduled date that the next IFSP meeting shall take place;~~

~~4. A copy of the current IFSP that has expired or is expiring, with amendments; and~~

~~5. Copies of the current progress reports from the IFSP team.~~

~~(d) If a family chooses not to receive a service included on the IFSP, for reasons such as illness or an inability to keep an appointment, the service provider shall document the circumstances in his staff notes.~~

~~(4)~~] The following shall be adhered to in the development and implementation of the IFSP. IFSP team members shall:

(a) Provide a family-centered approach to early intervention;

(b) Honor the racial, ethnic, cultural, and socioeconomic diversity of families;

(c) Show respect for and acceptance of the diversity of family-centered early intervention;

(d) Allow families to choose the level and nature of their involvement in early intervention services[~~intervention's involvement in their lives~~];

(e) Facilitate and promote family and professional collaboration and partnerships, which are the keys to family-centered early intervention and to successful implementation of the IFSP process;

(f) Plan and implement the IFSP using a team approach;

(g) Reexamine their traditional roles and practices and develop new practices as appropriate that promote mutual respect and partnerships which may include a transdisciplinary approach;

(h) Ensure that First Steps services are flexible, accessible, founded on scientifically based research to the extent practicable, and are necessary to meet the unique needs of the child and family to achieve the outcomes identified, including the frequency, intensity, and method of delivery of the services [~~and responsive to family identified needs~~]; and

(i) Ensure that families have access and knowledge of services that shall:

1. Be provided in as normal a fashion and environment as possible; [~~and~~]

2. Promote the integration of the child and family within the community;

3. Be embedded in the family's normal routines and activities; and

4. Be conducted in the family's natural environment, if possible, and in a way that services promote integration into a community setting[~~atmosphere~~] which includes children without disabilities.

(6)[~~(5)(a)~~] For a child who has been evaluated for the first time and determined eligible in accordance with 902 KAR 30:120[~~911 KAR 2:120~~], a meeting to develop the initial IFSP shall be conducted within forty-five (45) days after the point of entry receives the referral.

(7)[~~(b) If the initial IFSP meeting does not occur within forty-five (45) days due to illness of the child or approval to delay by the parent, the delay circumstances shall be documented on the IFSP.~~

~~(6)~~] The IFSP shall be reviewed [~~for a child and the child's family~~] by convening a [~~face-to-face~~] meeting at least every six (6) months. An IFSP team meeting shall be convened more frequently if:

(a) The family and[~~or~~] a team member requests a periodic IFSP review meeting;

(b) An early[~~A therapeutic~~] intervention service is added or increased.

(8)[~~(7)(a) The service coordinator shall obtain written approval or verified verbal approval from team members and shall document the means of obtaining that approval on the IFSP. The team members shall document the contact and approval in their staff notes. The contact and approval shall occur if:~~

~~1. A child is discharged from:~~

~~a. A service due to achieving developmental milestones in that area; or~~

~~b. The First Steps Program;~~

~~2. A service provider recommends a decrease in the frequency, intensity or duration of the service provided by that service provider;~~

~~3. The frequency of a service increases but not the number of units, such as changing from once a week for one (1) hour to twice a week for thirty (30) minutes;~~

~~4. A member of the IFSP team determines that an additional assessment is needed;~~

~~5. The family requests transportation services;~~

~~6.a. A service provider is being replaced;~~

~~b. The replacement provider does not change the outcomes identified on the current IFSP; and~~

~~c. The family agrees;~~

~~7. A team member changes provider numbers and the family wishes to retain that team member's services; or~~

~~8. An assistive technology device is ordered after an IFSP meeting was held at which the team members agreed that a specific assistive technology device was needed and strategies and activities were identified in the plan to meet the outcomes.~~

~~(b) The family shall be given prior written notice of any changes to the IFSP.~~

~~(8) With the approval of the family, the primary service coordinator shall arrange an IFSP conference to discuss the transition of the family from the program. The conference shall be conducted at least ninety (90) days and up to six (6) months before the child's third birthday and shall include:~~

~~(a) The family;~~

~~(b) A representative of the local education agency and representatives of other potential settings;~~

~~(c) The primary service coordinator as a representative of the First Steps Program;~~

~~(d) Others identified by the family; and~~

~~(e) Current service providers.~~

~~(9)~~] The IFSP shall include:

(a)1. A summary of the family rights handbook;

2. A signed statement of assurances by the family; and

3. A statement signed by the parent that complies with KRS 200.664(6);

(b) Information about the child's present level of developmental functioning. Information shall cover the following domains:

1. Physical development that includes fine and gross motor skills, vision, hearing, and general health status;[~~:~~]

2. Cognitive development that includes[~~include~~] skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;

3. Communication development that includes skills related to exchanging information or feelings, including receptive and expressive communication and communication with peers and adults;

4. Social and emotional development that includes skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals. [~~These include:~~

~~a. Attachment with caregivers or family members;;~~

~~b. Interactions with nondisabled peers and adults;~~

~~c. Play skills; and~~

~~d. Self-concept development;~~]

5. Adaptive development that includes self-help skills and the ability of the child's sensory systems to integrate successfully for independent functions. [~~that include:~~

~~a. Self-feeding;~~

~~b. Toileting;~~

~~c. Dressing and grooming; and~~

~~d. Meaningful interaction with the environment;~~

~~6. Physical development that shall be documented annually and that shall include:~~

~~a. Vision;~~

~~b. Hearing;~~

~~c. Health status; and~~

~~d. If present, the established risk condition;~~]

(c) Performance levels to determine strengths which can be used to enhance functional skills in daily routines when planning instructional strategies to teach skills;

(d) A description of:

1. Underlying factors that may affect the child's development including the established risk condition; and

2. What motivates the child, as determined on the basis of observation in appropriate natural settings, during child interaction and through parent report;

(e) With concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the child;

(f)[~~1.~~] A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and time lines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome [~~and strategy~~] statements shall:

1.[~~a.~~] Be functionally stated;

2.[~~b.~~] Be representative of the family's own priorities;

3.[~~c.~~] Fit naturally into the family's routines or schedules;

4.[~~d.~~] Reflect the use of the family's own resources and social support network; and

5.[~~e.~~] Be flexible to meet the child and family's needs in expanded current and possible future environments; and[~~2. Strategy and activity statements that shall be practical suggestions that assist the family and other team members in achieving the family's desired outcome for the child and family.~~

~~a. Typically strategies shall refer to the steps or methods a family and team will use to accomplish the outcomes;~~

~~b. Activities shall refer to the routines or regular events that occur in the child's natural environment; and~~

~~c. The strategies and activities area shall include how strategies will be embedded into activities, the criteria of how the outcomes shall be measured to determine mastery or progress and shall be developmentally appropriate, functional, valued by others, realistic and achievable and promote generalized use of skill;~~]

(g)1. The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes. Service documentation shall be stated in frequency, intensity, duration, location and method of delivering services, and shall include payment arrangements, if any;

2. [~~A student in a field experience with an approved First Steps provider who provides therapeutic intervention shall complete and sign staff notes and the First Steps provider shall also complete and sign a staff note for each session in which the student facilitates intervention, including a statement in the note that direct one-on-one supervision was provided during the intervention session.~~

~~3.~~] With the exception of group intervention, and unless prior authorization is granted in accordance with 902 KAR 30:200[~~911 KAR 2:200~~], Section 4, based on individual needs of the child, the frequency and intensity for early[~~therapeutic~~] intervention for each child shall not exceed one (1) hour per discipline per week[~~day~~] for the following disciplines:

a. Audiologist;

b. RN or LPN;

c. Nutritionist or dietician;

d. Occupational therapist or occupational therapist assistant;

e. Orientation and mobility specialist;

f. Physician;

g. Physical therapist or physical therapist assistant;

h. Psychologist, psychological practitioner**, certified psychologist with autonomous functioning,**[~~certified psychologist with autonomous functioning~~], psychological associate, family therapist, [~~or~~] licensed social worker, or licensed professional clinical counselor;

i. Speech language pathologist [~~or speech language pathologist assistant~~];

j. Vision specialist including teacher of the visually impaired, optometrist, and ophthalmologist;

k. Teacher of the deaf and hard of hearing; or

l. Developmental interventionist [~~or developmental associate~~];

3.[~~4.~~]a. A description of the natural environment, which includes natural settings and service delivery systems, in which the early intervention service is to be provided;

b. How the skills shall be transferred to a caregiver so that the caregiver can incorporate the strategies and activities into the child's natural environment; and

c. How the child's services may be integrated into a setting in which other children without disabilities participate; and

4.[~~5.~~] If the service cannot be provided in a natural environment, the IFSP shall be documented with the reason, including:

a. Why the early intervention service cannot be achieved satisfactorily in a natural environment;

b. How the service is supported by the peer reviewed research;

c, How the service provided in this location or using this approach will support the child's ability to function in his natural environment; and

d. A timeline as to when the service might be expected to be delivered in a natural environment approach.[~~;~~]

(h) The projected dates for initiation of the services, and the anticipated length, duration, and frequency of those services;

(i) Other services that the child needs that are not early intervention services, such as medical services or housing for the family., that are not early intervention services. The funding sources and providers to be used for those services or the steps that will be taken to secure those services through public or private resources shall be identified;

(j) The name of the [~~primary~~] service coordinator representing [~~chosen to represent~~] the child's or family's needs and the primary service provider. The [~~primary~~] service coordinator shall be responsible for the implementation of the IFSP and coordination with other agencies and persons in accordance with 902 KAR 30:110, Section 2[~~911 KAR 2:140, Section 1(6)~~];

(k) Include at least one (1) transition outcome that addresses transition to preschool services to the extent that those are appropriate or to other services that may be available, if appropriate, as a part of every IFSP and is supported by steps that may include:

1. A description of types of information the family might need in relation to future placements;

2. Activities to be used to help prepare the child for changes in the service delivery;

3. Specific steps that will help the child adjust to and function in the new setting;

4. How and when assistive technology equipment will be returned and how it will be replaced in the next setting if appropriate; and

5. A description of information that will be shared with the new setting, timelines to share the information, and ways to secure the necessary releases to refer and transmit records to the next placement.[~~The steps to be taken to support the transition of the child to preschool services provided by the public educational agency, to the extent that those services are considered appropriate, or to other services that may be available, if appropriate.~~

~~1. With approval of the family, an IFSP transition conference shall occur at least ninety (90) days and up to six (6) months prior to the child's third birthday;~~

~~2. The IFSP transition conference shall involve:~~

~~a. IFSP team members;~~

~~b. Staff from the local public educational agency; and~~

~~c. Other agencies at the family's request that could be potential service agencies after the child turns three (3); and~~

~~3. The conference shall be held to review program options for the child at age three (3) and to write a plan, through the IFSP, for transition. The service coordinator shall chair this meeting; and~~]

(l) Documentation substantiating the following if the child is being provided group intervention:

1. If the child is enrolled in day care or attending a group during normal routines, why the early[~~therapeutic~~] intervention cannot be provided in the child's current group setting; and

2. Early[~~Therapeutic~~] intervention during group shall be directly related to the child's individualized strategies and activities as iden-

tified on the IFSP.

(9)[~~(10)~~] If the IFSP team determines that an early[~~a therapeutic~~] intervention service shall be provided using a transdisciplinary team approach, the IFSP, provider notes and progress documentation shall include:

(a) Which disciplines are providing the therapy using this approach;

(b) Evidence of transdisciplinary planning and practice, including documentation of how role-release is occurring;

(c) How the skills are being transferred so that one (1) provider is capable of providing the services previously provided by the team;

(d) That the service is individualized to the particular family and child's needs; and

(e) If more than one (1) provider is present and providing early[~~therapeutic~~] intervention services at the same time using a co-treatment approach:

1. Why this approach is being used;

2. The outcomes and activities;

3. Who is performing what activities; and

4. That the service providers involved are providing or learning about the early[~~therapeutic~~] intervention at the same time.

(10)[~~(11)~~] The family shall be encouraged to discuss their child's activities, strengths, and likes and dislikes[~~,~~] exhibited at home.

(11)[~~(12)~~] The IFSP shall highlight the child's abilities and strengths, rather than focusing just on the child's deficits.

(12)[~~(13)~~] Every attempt shall be made to explain the child assessment process by using language the family uses and understands.

(13)[~~(14)~~] The families may agree, disagree, or refute the assessment information.

(14)[~~(15)~~] The family interpretation and perception of the assessment results shall be ascertained and the family's wishes and desires shall be documented as appropriate.

(15)[~~(16)~~] If an agency or professional not participating on the IFSP team but active in the child's life makes a recommendation for an early intervention service, it shall not be provided as a First Steps service unless the IFSP team considers the recommendation, determines[~~verifies~~] that it relates to a chosen outcome, and family priority, and agrees that it is a necessary service[~~to it~~].

Section 3. Assistive Technology. (1) The cost of an assistive technology device shall be reimbursed if the device is approved by the Part C Coordinator.

(2) To access assistive technology service and devices, the child shall:

(a) Be eligible for First Steps;

(b) Have a need for assistive technology devices and services documented by appropriate assessment procedures; and

(c) Have a need for and use of assistive technology devices and services documented in the IFSP.

(3) The First Steps assistive technology review process shall be utilized for the following:

(a) All equipment requests which exceed $100; and

(b) All equipment that is deemed questionable by the service coordinator or other POE staff, state lead agency staff, or cannot be determined by the IFSP team as appropriate.

(4) Request will be processed within ten (10) days of receipt of required information. The required information includes:

(a) A current IFSP;

(b) Assessments with recommendations;

(c) Justification statement of specific devices based on needs;

(d) Information regarding equipment or device request; and

(e) Documentation of safety and approved uses in the birth to three (3) age population.

(5) The decision made through the review process may be appealed to the Part C Coordinator who shall:

(a) Consult with the monitoring committee; and

(b) Issue the final decision.

(6) The decision of the Part C Coordinator may be appealed pursuant to 902 KAR 30:180. **[**~~Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) The "IFSP Extension Request form RF 11", May 2010 edition; and~~

~~(b) The "IFSP Extension Request form RF 11A", May 2010 edition.~~**]**[~~The First Steps Individualized Family Service Plan (IFSP), January 2005, is incorporated by reference.~~]**[**~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~**]**

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the requirements for assessment, service planning and assistive technology within the Kentucky Early Intervention System.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to service coordinators, primary level evaluation providers, intensive level evaluation teams and other service providers on assessments, service planning and assistive technology. Assessment is service that all children in the Kentucky Early Intervention System receive and provides the foundational information to develop service plans. As a critical feature of the early intervention system, guidance is required to ensure quality assessments that meet the federal requirements as well as being sources of useful information for practitioners and families. Federal requirements for assessment are found at 34 C.F.R. 303.322(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650(6) requires the state to be in compliance with federal statute and regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this regulation add guidance and clarity to assessment, service planning and assistive technology conducted by the Individual Family Service Plan teams. Language consistent with applicable federal regulations and statute is added. Obsolete language is removed and some detail was removed. Guidance in the form of timelines and responsibilities of early intervention providers is also added to the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments to this regulation add guidance and clarity to assessment, service planning and assistive technology conducted by the Individual Family Service Plan teams. Language consistent with applicable federal regulations and statute is added to ensure compliance with federal regulation. Some language is removed that is more appropriate for policy and procedure documents. Obsolete language is removed so that the regulation reflects current program structure and practice. The disciplines that use assistive technology in their practices (speech language pathologists, physical therapists, and occupational therapists) will benefit from the clarity and guidance the regulation provides.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650 (6) and KRS 200.652 (3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: The changes to this regulation will assist the state by creating a more streamlined system that is easier to su-

pervise and monitor. The changes to the requirements for the IFSP will bring IFSPs into alignment with federal regulations. Also, regulations will now reflect the current practices and tools (such as the online data/child's record system) thus eliminating confusion between regulation and practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

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

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system. Families will benefit by not undergoing unnecessary and duplicative testing and will be more informed consumers of the public services. This increased knowledge of the early intervention system may lead to increased supports and progress for their children.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal Part C funds and state general funds will be used to implement this administrative regulation.

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

(8) State whether or not this administrative regulation establishes an fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative regulation during the subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Changes to this administrative regulation will save an estimated $10,000 per year by reducing the number of unnecessary plan revisions and duplicate service assessments.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.340 through 303.346 outlines the states responsibilities in the development and implementation of the Individual Family Service Plan. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.664 charges the Cabinet for Health and Family Services, Department for Public Health with the development of the IFSP for eligible children.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is in full compliance with the federal statutes.

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 than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvement
(Amended After Comments)

902 KAR 30:150. [~~Kentucky Early Intervention Program~~] Personnel qualifications.

RELATES TO: 20 U.S.C. **1431-1444** **[**~~1471-1485~~**]**

STATUTORY AUTHORITY: KRS 194A.050, 200.650-676[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 20.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions for provider[~~of personnel~~] qualifications for the participation in the[~~as they relate to~~] First Steps, Kentucky's Early Intervention Program.

Section 1. Enrollment Process for Provider Participation. (1) The program shall enroll sufficient providers to carry out the early intervention services according to the provision of KRS 200.650 to 200.676.

(2) The program shall contract only with an individual or agency who meets the qualifications set forth in Section 2 of this administrative regulation.

(3) The program shall reserve the right to contract or not contract with any potential provider or agency.

(4) Any provider or agency that wishes to participate as a provider in the First Steps program shall;

(a) Complete and submit an application to the program that shall include:

1. A valid professional license, registration, or certificate;

2. A provider enrollment form;

3. A code of ethical conduct; and

4. An individual provider agreement.

(b) Adhere to the background check policy and submit, prior to final approval:

1. Administrative Office of the Courts, PT 49 Criminal Background Check form; and

2. Central Registry Check form, DPP-156.

(c) Agree to provide service within the individuals or agency's scope of practice and in accordance with First Steps policy and state and federal regulations and laws.

(d) Be enrolled as a participating provider prior to being eligible to receive reimbursement in accordance with federal and state laws.

(5) The application will not be considered complete and will not be processed until all information and any subsequent documentation requested by the program is provided.

(6) The program shall make an enrollment determination within ninety (90) days of receipt of a completed application.

(7) If the applicant is approved for enrollment, the contract shall be executed and the provider shall be issued a contract number that shall be used by the provider solely for identification purposes. The provider number is a unique identifier and shall not be shared with any other provider.

(8) A provider's participation shall begin and end on the dates specified in the executed contract.

(9) If an agency is the enrolled provider, the agency is responsible for ensuring that all staff providing First Steps services meet the First Steps personnel qualifications.

(10) Provider applications and contracts must be renewed every even-numbered year, and the individual or agency wishing to renew a contract must resubmit the required documentation to continue the contract.

Section 2. Personnel Qualifications. (1) Minimum[~~Minimal~~] qualifications for professionals or disciplines providing services in First Steps shall be:

(a) An audiologist shall have in accordance with KRS 334A.030:

1. A master's degree; and

2. A license from the Kentucky Board of Speech-Language Pathology and Audiology.

(b) A family therapist shall have in accordance with KRS 335.300:

1. A master's degree; and

2. A license from the Kentucky Board of Licensure of Marriage and Family Therapists.

(c) A developmental interventionist shall have in accordance with KRS 161.028:

1. A bachelor's degree; and

2.a. An interdisciplinary early childhood education (IECE) certificate by the Kentucky Education Professional Standards Board, Division of Certification or be able to obtain a probationary or emergency IECE certificate issued by the Educational Professional Standards Board; or[~~;~~]

b. [~~Be working toward the IECE certificate by:~~

~~(i) Being enrolled in an approved preparation program in IECE at a university or college; or~~

~~(ii) Having an individual professional development plan approved by the Department for Public Health for developing the skills in the teacher performance standards for IECE as stated in 16 KAR 2:040, Section 9; or~~

~~c. Hold~~] A valid out-of-state certificate for the teacher of children ages' birth to three (3) years with disabilities.

(d) A nurse shall have in accordance with KRS 314.041:

1. An associate degree or diploma from a registered program; and

2. A license from the Kentucky Board of Nursing.

(e) A nutritionist shall have in accordance with KRS 310.031:

1. A master's degree; and

2. A certificate from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

(f) A dietitian shall have in accordance with KRS 310.021:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

(g) An occupational therapist shall have in accordance with KRS 319A.110:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(h) An orientation and mobility (O and M) specialist shall have in accordance with KRS 161.020 and with the Division of Exceptional Children Services, Kentucky Department of Education a bachelor's degree in Special Education with emphasis on visual impairment and O and M[~~,~~].

(i) A physician shall have in accordance with KRS 311.571:

1. A doctor of medicine degree or doctor of osteopathy degree; and

2. A license from the Kentucky Board of Medical Licensure.

(j) A physical therapist shall have in accordance with KRS 327.020:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Physical Therapy.

(k) A **certified** psychologist **with autonomous functioning or a licensed psychological practitioner** shall have in accordance with KRS **319.050 [**~~319.032~~**]**:

1. A doctoral degree; and

2. A license from Kentucky Board of Examiners of Psychology.

(l) A **certified psychologist [**~~psychological practitioner~~][~~certified psychologist with autonomous functioning~~] or licensed psychological associate shall have in accordance with KRS 319.056 or 319.064:

1. A master's degree; and

2. A certificate from the Kentucky Board of Examiners of Psychology.

(m) A social worker shall have in accordance with KRS 335.090:

1. A bachelor's degree; and

2. A license from the Kentucky Board of Social Work.

(n) A speech-language pathologist shall have in accordance with KRS 334A.050:

1. A master's degree; and

2.a. A license from the Kentucky Board of Speech-Language Pathology and Audiology; or

b. An interim license from the Kentucky Board of Speech-Language Pathology and Audiology and be under the supervision of a currently-enrolled First Steps speech pathology provider.

(o) A teacher of children who are deaf and hard of hearing shall have in accordance with KRS 161.030:

1. A bachelor's degree; and

2. A certificate for teaching the hard of hearing, deaf, or hearing impaired, or a certificate for teaching the hearing impaired, grades P-12, K-12 issued by the Kentucky Education Professional Standards Board, Division of Certification.

(p) A teacher of the visually impaired shall have in accordance with KRS 161.030:

1. A bachelor's degree; and

2. A certificate for teaching of the visually impaired, grades P-12, or a certificate for teaching the partially seeing, blind, or visually impaired, K-12 issued by the Kentucky Education Professional Standards Board, Division of Certification.

(q) A licensed professional clinical counselor shall have in accordance with KRS 335.525(1):

1. A master's degree; and

2. A license from the Kentucky Board of **Licensed Professional Counselors [~~Licensure~~].**

(r) An optometrist shall have in accordance with KRS **320.220 [~~320.290~~]**:

1. A degree from an accredited school or college of optometry; and

2. A license from the Kentucky Board of **Optometric Examiners [~~Licensure~~].**

(s) An ophthalmologist shall have in accordance with KRS 311.571:

1. A doctor of medicine degree or doctor of osteopathy degree;

2. A license from the Kentucky Board of Medical Licensure; and

3. Certification from the American Board of Ophthalmology.

(2) The minimum qualification for paraprofessionals providing [~~early interventions~~] services in First Steps shall be:

(a) A developmental associate shall:

1.a. Have an associate degree in the area of interdisciplinary early childhood education (IECE); and

b.[~~- Have a child development associate certificate for infant and toddlers caregiver or home visitor;~~

~~c. Have a postsecondary vocational education diploma in child development or child care; or~~

~~d. Be employed in the developmental associate role in an approved program by October 1, 1997, and have a high school diploma or GED and be working toward one (1) of the qualifications stated in clauses a, b, or c of this subparagraph by:~~

~~(i) Being enrolled in an approved program granting one (1) of the above stated qualifications; or~~

~~(ii) Having an individual professional development plan approved by the Department for Public Health for developing the skills necessary to acquire one (1) of the above stated qualifications; and~~

~~2.~~] Be directly[~~indirectly~~] supervised by a developmental interventionist.

(b) [~~A developmental assistant shall:~~

~~1. Have:~~

~~a. A high school diploma; or~~

~~b. A GED; and~~

~~2. Be directly supervised by a developmental interventionist or developmental associate.~~

~~(c)~~] An occupational therapy assistant shall have in accordance with KRS 319A.110:

1. An associate's degree in occupational therapy[~~OTA degree~~]; and

2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(c)[~~(d)~~] A physical therapy assistant shall have in accordance with KRS 327.040(13):

1. An associate degree in physical therapy assistance; and

2. A license from the Kentucky Board of Physical Therapy.

(d)[~~(e)~~] A licensed practical nurse shall have in accordance with KRS 314.051:

1. A high school diploma or a GED;

2. [~~Have~~] Completed a state approved LPN education program; and

3. A license from the Kentucky Board of Nursing.

(3) The minimum qualifications for recognized service positions providing services in First Steps shall be:

(a) A[~~An initial~~] service coordinator shall[~~be approved by the cabinet based on the following qualifications~~]:

1. Meet[~~Meeting~~] minimum highest entry-level requirement for one (1) of the professions delineated in this administrative regulation; or

2. Have a bachelor's degree and the equivalency of two (2) years' experience in working with young children ages birth through five (5) years, or have a bachelor's degree and two (2) years' experience working with families with young children ages birth through five (5) years, in a position in which the following skills and competencies have been demonstrated:

a. Communication skills in interviewing, negotiating and mediating, and providing informal support;

b. Problem-solving by finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;

c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and

d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.

(b) [~~A primary service coordinator shall be approved by the cabinet based on the following qualifications:~~

~~1. Meeting minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;~~

~~2. Meeting requirements for one (1) of the paraprofessionals delineated in this administrative regulation; or~~

~~3. Having a bachelor's degree and the equivalency of two (2) years' experience in working with young children ages birth through five (5) years in a position in which the following skills and competencies have been demonstrated:~~

~~a. Communication skills in interviewing, negotiating and mediating, and providing informal support;~~

~~b. Problem-solving: finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;~~

~~c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and~~

~~d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.~~

~~(c)~~] A developmental evaluator shall[~~be approved by the cabinet by~~]:

1. Meet[~~Meeting~~] minimum highest entry-level requirements for one (1) of the professionals delineated in this administrative regulation;

2. Have[~~Having a bachelor's degree in a related field;~~

~~3. Having~~] two (2) years experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development;

3. Have[~~and 4. Having had~~] one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice, or completing a mentorship during the first year of providing services in First Steps as approved by the cabinet; and

4. Be approved by the cabinet.

(c)[~~(d)~~] An assistive technology specialists shall[~~be approved by the cabinet based on the following qualifications~~]:

1. Meet the[~~Meeting~~] minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;

2. Have[~~Having~~] extensive knowledge, training, and experience in the field of assistive technologies for infants and toddlers with disabilities; or

3. Meet[~~Meeting~~] the qualifications in subparagraph 2 of this paragraph and be employed by an agency that currently provides assistive technology services in First Steps; and[~~, and be approved by the cabinet~~].

4. Be approved by the cabinet.

(d)[~~(e)~~] A respite provider shall:

1. Meet all license, administrative regulations, and other requirements applicable to the setting in which respite is provided; and

2. Be approved by the individualized family service planning team.

Section 3.[~~2.~~] Field Experiences - Intervention services implemented by a student.

(1) With family consent, a student[~~Students~~] may provide early[~~therapeutic~~] intervention and services under the direct one-to-one supervision of a provider qualified[~~personnel employed~~] in accordance with Section 1 of this administrative regulation.

(2) A student who provides early intervention services shall complete and sign staff notes for each session in which the student facilitates or provides intervention.

(3) The approved First Steps provider shall also include a staff note for each session involving a student.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form 6, Provider Enrollment Form", April 2008 edition;

(b) "The Code of Ethical Conduct"; April 2010 edition;

(c) "Form 5A Service Provider Agreement", April 2010 edition;

(d) "Administrative Office of the Courts-RU-004", January 2010 edition; and

(e) "Central Registry Check, DPP-156", December 2005 edition.

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

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of:

(a) What this administration regulation does: The amendment outlines the process for provider participation the Kentucky Early Intervention Program and defines the minimum qualifications for the certain professionals or disciplines that provide early intervention services. Another change defines the minimum qualifications for the recognized service position of service coordinator and deletes service positions that are no longer a part of the Kentucky early intervention system. The qualifications for developmental evaluator and assistive technology specialist are also modified.

(b) The necessity of this administrative regulation: 902 KAR 30:050 is necessary to define the professionals or disciplines that may provide early intervention services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652 requires the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services.

(d) How this administrative regulation currently assists in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change the existing administrative regulation: The amendments identify the information required to enroll as a provider in the Kentucky early intervention program and defines the minimum qualifications for some professionals or disciplines that provide early intervention services; adds that a development interventionist may hold the probationary or emergency IECE certificate; adds licensed professional clinical counselor, optometrist, and ophthalmologist as qualified professionals; and changes associate degree for paraprofessionals and type of supervision. The amendment also defines the minimum qualifications for recognized service position of service coordinator and removes qualifications for primary service coordinator. The qualifications for developmental evaluator and assistive technology specialist are also modified.

(b) The necessity of the amendment to this administrative regulation: Information is necessary to outline the provider enrollment process. Certain professional are added as qualified early intervention providers for compliance to federal statute and regulation and to address provider shortages. Modifications for developmental evaluator and assistive technology specialist were change to reflect current practice.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650(6) requires that the state be in compliance with federal law and KRS 200.652(3) requires a statewide system of early intervention services. The amendments to the administrative regulations accomplish these two requirements.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will continue to provide early intervention services as they currently practice. Individuals who previously performed the duties of Primary Service Coordinators have been hired by Points of Entry provider or enrolled in First Steps as another type of qualified providers or left the early intervention service system for employment in another field. Professionals who practice the discipline of optometry, ophthalmology, counseling as a licensed professional clinical counselor will need to enroll as First Steps providers if they so choose. This enrollment requirement will also affect new developmental interventionists who are currently not in the system. Agencies that employ paraprofessionals to provide early intervention services will need to ensure that the paraprofessional has the required education degree and will need to provide the appropriate type of supervision. Early intervention providers, both those who are agency-based and those who are independently contracted, that provide the services of a developmental evaluator or assistive technology specialist will need to ensure that staff meet the necessary qualifications for the respective service position.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Individuals who meet the early intervention provider qualifications are eligible to enroll as a provider for and be paid by the First Steps system.

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

(a) Initially: There are no costs to implement the amendment to this regulation.

(b) On a continuing basis: There are no costs to implement the amendment to this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps Program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Changes to this administrative regulation will reduce expenditures by an estimated $50,000 per year.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.168 and 303.169 outline the requirements for a Comprehensive system of personnel development (CSPD) and Personnel standards. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.666 charges the Cabinet for Health and Family Services, Department for Public Health to monitor personnel standards for service providers to ensure the qualified service providers necessary to carry out the provisions of KRS 200.650 to 200.676 are appropriately and adequately prepared and trained in order to comply with the requirements of federal law and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is ensuring that all those interested in becoming early intervention providers and service coordinators meet the highest level of qualifications for their contracted discipline.

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 than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvement
(Amended After Comments)

902 KAR 30:160. [~~Kentucky Early Intervention Program~~] Covered services.

RELATES TO: 20 U.S.C. **1431-1444** **[**~~1471-1485~~**]**

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 200.650-676

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of covered services under First Steps, Kentucky's Early Intervention Program.

Section 1. Covered Services. (1) Services shall be covered when included and authorized through parent signature [~~or verified approval~~] on the individual Family Service Plan (IFSP)[~~individual's IFSP~~] developed by an IFSP team which shall include, at a minimum[~~least~~], the family and two (2) professionals as required[~~identified~~] in 902 KAR 30:150[~~911 KAR 2:150~~], Section 2(1)(a)-(s)[~~1(1)(a)-(p)~~], paraprofessionals as identified in 902 KAR 30:150[~~911 KAR 2:150~~], Section 2(2)(a)-(d)[~~1(2)(a)-(f)~~] or service positions as identified in 902 KAR 30:150[~~911 KAR 2:160~~], Section 2(3)(a)-(d)[~~1(3)(a)-(d)~~]:[~~(a) At least two (2) professionals, paraprofessionals, or service positions shall be from separate agencies or represent different approved providers; and~~

~~(b) One (1) discipline shall be a licensed medical professional as identified in 911 KAR 2:200, Section 3(2)(e), with the exception of Section 3(2)(e)13 and 14 of 911 KAR 2:200.~~]

(2) Services covered shall include[~~be~~]:

(a) Service coordination as provided in accordance with 902 KAR 30:110, Section 2[~~911 KAR 2:110 and 911 KAR 2:140~~]:

1. A child shall have only one (1) designated service coordinator at a given time;

2. Service coordination shall be provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(a)[~~those identified in 911 KAR 2:150~~]; and

3. Service coordination shall be provided under the limitations of 902 KAR 30:200, Sections 2(2)(a) and 3(b)[~~911 KAR 2:200, Section 4~~].

(b) Primary evaluation as provided in accordance with 902 KAR 30:120[~~911 KAR 2:120~~]:

1. Primary evaluation shall be considered the first level of a two (2) tier system of evaluation; and

2. Primary evaluation shall be provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(3)(b)[~~those identified in 911 KAR 2:120 and 911 KAR 2:150~~];

(c) Intensive team evaluation as provided in accordance with 902 KAR 30:120, Sections 1(4) and 2(a)(12)[~~911 KAR 2:120~~]:

1. Intensive team evaluation shall be considered the second level of a two (2) tier system of evaluation;

2. Intensive team evaluation shall be provided by qualified professionals in accordance with 902 KAR 30:120, Section 2(a) those identified in 911 KAR 2:120 and 911 KAR 2:150;

(d) Assessment of the child[~~Service assessment~~] as provided in accordance with 902 KAR 30:130, Section 1, and 902 KAR 30:200, Section 3(1)[~~911 KAR 2:130~~];

(e) Early[~~Therapeutic~~] intervention.

1. Early[~~Therapeutic~~] intervention, defined as face-to-face intervention with the child and caregivers within the context of the environment, includes three (3) types of service:

a. Individual home or community service[~~services~~] which includes intervention provided [~~to the child~~] by a First Steps qualified professional to an eligible child at the child's home or other natural setting in which children under three (3) years of age are typically found (including non-First Steps provider day care centers and family day care homes) under the limitations of 902 KAR 30:200, Section 3(2)[~~911 KAR 2:200, Section 4~~]; or

b. Individual office or center-based service which includes intervention provided by First Steps qualified professionals to an eligible child at the professional's[~~professionals~~] office or center site under the limitations of 902 KAR 30:200, Section 3(2)[~~911 KAR 2:200, Section 4~~]; or

c.(i) Group intervention which includes the provision of early intervention services by First Steps qualified personnel in a group, defined as the presence of two (2) or more eligible children, at an early intervention professional's site, office, center, home, or other community-based setting where children under three (3) years of

age are typically found.

(ii) The group may also include children without disabilities as long as a three (3) to one (1) ratio of children to staff is maintained.

(iii) Group intervention shall be provided under the limitations of 902 KAR 30:200, Section 3(2)(b)[~~911 KAR 2:200, Section 4~~].

2. Disciplines providing early[~~therapeutic~~] intervention shall be qualified professionals in accordance with 902 KAR 30:150, Section 2(1)(a)-(s), or qualified paraprofessionals in accordance with 902 KAR 30:150, Section 2(2)(a)-(d)[~~911 KAR 2:150,~~] and shall include the following:

a. An audiologist;
b. A family therapist;
c. A developmental interventionist;
d. A developmental associate;
e. A nurse;
f. A LPN;
g. A nutritionist;
h. A dietician;
i. An occupational therapist;
j. An occupational therapy assistant;
k. An orientation and mobility specialist;
l. A physical therapist;
m. A physical therapist assistant;
n. A **certified** psychologist **with autonomous functioning, a licensed psychological practitioner, certified psychologist, or licensed psychological associate**;
o. A speech language pathologist;
p. A licensed social worker;
q. A Licensed Professional Counselor (LPCC);
r. A teacher of the visually impaired; or
s. A teacher of the deaf and hard of hearing.[~~a. An audiologist; or~~
~~b. A family therapist; or~~
~~c. A developmental interventionist; or~~
~~d. A developmental associate; or~~
~~e. A developmental assistant; or~~
~~f. A nurse; or~~
~~g. A LPN; or~~
~~h. A health aide; or~~
~~i. A nutritionist; or~~
~~j. A dietician; or~~
~~k. An occupational therapist; or~~
~~l. An occupational therapy assistant; or~~
~~m. An orientation and mobility specialist; or~~
~~n. A physical therapist; or~~
~~o. A physical therapist assistant; or~~
~~p. A psychologist; or~~
~~q. A speech language pathologist; or~~
~~r. A speech language pathologist assistant; or~~
~~s. A licensed social worker; or~~
~~t. A teacher of the visually impaired; or~~
~~u. A teacher of the deaf and hard of hearing;~~]

(f) Integrated disciplines center-based service shall be [~~an intervention~~] provided by an agency that is approved by the Department for Public Health[~~Commission for Children with Special Health Care Needs~~] to be qualified to offer services:

1. By at least three (3) of the following disciplines working together in a group setting who qualify in accordance with 902 KAR 30:150 Section 2(1)(c), (g), (j), (n)[~~911 KAR 2:150~~]:

a. Developmental interventionist [~~or developmental interventionist associate~~]; [~~or~~]
b. Occupational therapist; [~~or~~]
c. Physical therapist; or
d. Speech therapist; and

2. At least[~~Where all~~] three (3) disciplines shall be scheduled and present, except in routine absences due to sickness or other conflicts;

3. The providers[~~disciplines~~] shall give evidence of transdisciplinary planning and practice;

4. If integrated discipline center-based service is[~~Where children have identified~~] in the IFSP [~~multiple disciplines~~], with the majority of the group make-up being children who need three (3) or more disciplines, except when approved by the Department for Public Health[~~Commission for Children with Special Health Care Needs~~]; then

5. [~~Where~~] Each child's record shall have a staff note from each discipline, except a staff note shall not be required from a discipline if[~~for those children where~~] the discipline is not identified in the IFSP as a needed service;

(g) Collateral service as provided in accordance with 902 KAR 30:200, Section 3(4)[~~shall be the provision of consultation and planning directed toward the needs of the child with professionals while attending the IFSP meeting, and consultation by and with the child's physician~~];

(h) Assistive technology in accordance with 902 KAR 30:001[~~911 KAR 2:100~~] and 30:130[~~911 KAR 2:140~~];

(i) Respite shall be a service provided to the family of an eligible child for the purpose of providing relief from the care of the child in order to strengthen the family's ability to attend to the child's developmental needs under the limitations of 902 KAR 30:200, Section 3(3)[~~911 KAR 2:200, Section 4~~];

(j) Transportation and related cost shall be the costs of travel that are necessary to enable an eligible child to receive early intervention services;

(k) **All families, at a minimum, shall be provided language access services consistent with the provisions of the Individuals with Disabilities Education Improvement Act (IDEA) [**~~Interpreters shall be used when necessary~~**]** to assist the family in understanding the purpose of First Steps and the family's procedural safeguards during referral, eligibility determination activities, and IFSP meetings[~~services and procedures and shall be reimbursed when:~~

~~1. The service is identified on the IFSP;~~

~~2. The PSC has identified the vendor and established a link with the billing agent;~~

~~3. The vendor meets the qualifications generally accepted for that role in the community and meets all requirements of the agency who hires the interpreter for that role if an agency is involved.~~

~~(3) Rates for covered services shall be negotiated rates based on reasonable and customary rates for same services or comparable services provided in the community.~~]

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: October 14, 2010
FILED WITH LRC: October 15, 2010 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone: (502) 564-7905, fax (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation describes the services that are provided and paid in the Kentucky Early Intervention system.

(b) The necessity of this administrative regulation: This regulation is necessary to eliminate confusion in the types of services provided and paid by the Kentucky Early Intervention System. The Kentucky Early Intervention System uses multiple funding streams to support the provision of services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652(5) requires the coordination of payment for early intervention services from federal, state, local and private insurance coverage, and the use of sliding fee scales.

(d) How this administrative regulation currently assists in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

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

(a) How the amendment will change the existing administrative regulation: The changes in this regulation remove redundant and obsolete language. Changes were also made to bring the state regulation into compliance with the federal regulations.

(b) The necessity of the amendment to this administrative regulation: The requirements and intent of the federal statute for state early intervention systems needed clarification. One amendment adds a new discipline as a provider of a covered service to address provider shortages. Other amendments reflect the current practices in the system.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.652(3) and (5) require the state to implement a statewide, comprehensive, interagency system of early intervention and to facilitate payment from multiple funding streams.

(d) How the amendment will assist in the effective administration of the statute: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers will be affected by these regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will continue to provide early intervention services as they currently practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Early intervention providers will be eligible for payment of covered services and participation in First Steps.

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

(a) Initially: There are no costs to implement the amendment to this regulation.

(b) On a continuing basis: There are no costs to implement the amendment to this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no revenue generated by this administrative regulation for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative regulations during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulations during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.340 through 303.346 outlines the content if the Individual Family Service Plan (IFSP), including the content of the IFSP and responsibility and accountability. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.664 charges the Cabinet for Health and Family Services, Department for Public Health to develop an Individual Family Service Plan the conforms to the federal requirements for the IFSP.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is in full compliance with federal statutes and regulations.

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 than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvement
(Amended After Comments)

902 KAR 30:180. Procedural safeguards[~~Kentucky Early Intervention Program mediation~~].

RELATES TO: 20 U.S.C. **1431-1444** **[**~~1471-1485~~**]**

STATUTORY AUTHORITY: KRS 194A.050, 200.650-676

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement administrative regulations. This administrative regulation sets forth the provisions for procedural safeguards for facilities participating[~~of mediation used~~] in First Steps, Kentucky's Early Intervention System.

Section 1. Parental Rights. (1) Definitions of consent, native language, and personally identifiable information.

(a) Consent means:

1. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

2. The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. The parent understands that the granting of consent is voluntary and may be revoked at any time;

(b) Native language, where used in reference to persons with limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible for or participating in First Steps;

(c) Personally identifiable means that information includes:

1. The name of the child, the child's parent, or other family member;

2. The address of the child;

3 A personal identifier, such as the child's or parent's social security number; or

4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(2) In accordance with 34 C.F.R. 300.560 through 300.576, the parents of a child eligible for the Kentucky Early Intervention Program shall be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, the development and implementation of IFSPs, individual complaints dealing with the child, and any other records maintained by First Steps staff about the child and the child's family.

(3) Prior written notice;

(a) Prior written notice shall be given to the parents of an eligible child no less than seven (7) days before the Point of Entry (POE) staff or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) The notice shall be in sufficient detail to inform the parents about:

1. The action that is being proposed or refused;

2. The reasons for taking the action;

3. All procedural safeguards that are available to the parent; and

4. The complaint procedures under Part C regulations 34 C.F.R. 303.510-303.512, including a description of how to file a complaint and the required timelines under those procedures.

(c) The written prior notice shall be:

1. Written in language understandable to the general public; and

2. Provided in the native language of the parents, unless it is clearly not feasible to do so.

(d) If the native language or other mode of communication of the parent is not a written language, the POE staff, or designated service provider, shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

2. The parent understands the notice; and

3. There is written evidence that the requirements of this paragraph have been met.

(e) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).

(4) Parent consent.

(a) Written parental consent must be obtained before:

1. Conducting the initial evaluation and assessment of a child; and

2. Initiating the provision of early intervention services.

(b) If consent is not given, the POE shall make reasonable efforts to ensure that the parent understands:

1. The nature of the evaluation and assessment or the services available; and

2. That the child will not receive the evaluation and assessment or services unless consent is given.

(5) The parents of an eligible child may determine if they, their child, or other family members will accept or decline any early intervention service, and may decline a service after first accepting it, without jeopardizing other early intervention services.

Section 2. Representation of Children and Surrogate Parents. (1) Each POE shall ensure that the rights of an eligible child are protected if:

(a) No parent, as defined in 902 KAR 30:**001[**~~100~~**]**(23), can be identified;

(b) The POE, after reasonable efforts, cannot discover the whereabouts of a parent; or

(c) The child is a ward of the state under the laws of the state.

(2) If the child is a foster child and does not reside with the child's parents, the POE shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The POE shall not be required to obtain parental consent if:

(a) Despite reasonable efforts, the POE cannot discover the whereabouts of the parent;

(b) The rights of the parents have been terminated in accordance with state law; or

(c) The rights of the parents to make educational decisions have been subrogated by a court in accordance with state law and the consent for initial evaluation has been given by someone appointed by the judge to represent the child.

(3) The biological or adoptive parent, when attempting to act as the parent and when more than one (1) party meets the definition of parent under 902 KAR 30:001(23), shall be presumed to be the parent unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child. If there is a judicial order that identifies a specific person or persons who meets the definition of "parent" in 902 KAR 30:001, Section 1(23)(a) **through [-]**(d) to act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(4) A POE shall determine whether a child needs a surrogate parent and assign a surrogate parent to the child. The surrogate parent of the child shall have all the rights afforded parents under Part C of IDEA, 34 C.F.R. Part 303, to make decisions about early intervention issues for a child. A POE shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

(a) No individual can be identified as a parent as defined in 902 KAR 30:001(23);

(b) The POE, after reasonable efforts, cannot discover the whereabouts of the parents;

(c) The child is a ward of the state; or

(d) The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 114311.

(5) The POE shall keep a record of the reasonable efforts made to discover the whereabouts of the parents, such as:

(a) Detailed records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(6) The POE shall have a procedure for selecting surrogates that is approved by the Department of Public Health. A surrogate:

(a) Shall not be an employee of the Kentucky Department for Public Health, the POE, or any other state agency that is involved in the education or care of the child;

(b) Shall not have any personal or professional interest that conflicts with the interests of the child; and

(c) Shall have knowledge and skills that ensure adequate representation of the child.

(7) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the POE solely because he or she is paid by the POE to serve as a surrogate parent.

(8) In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, and street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (6) of this section until a surrogate parent can be appointed that meets all the requirements of this section.

(9) The POE shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the Point of Entry that the child needs a surrogate.

(10) Responsibilities. A surrogate parent may represent a child in all matters related to:

(a) The evaluation and assessment of the child;

(b) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(c) The ongoing provision of early intervention services to the child; and

(d) Any other rights established under this administrative regulation.

Section 3. Mediation. (1) Each POE shall ensure that procedures are established and implemented to allow parties to disputes involving any matter concerning the identification, evaluation, placement of the child or the provision of appropriate early intervention services to resolve the disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under 34 C.F.R. 303.420.

(2) The POE agency shall use the mediation system established by the Department for Public Health.

(a) Mediation shall be adopted as an option to resolve complaints;

(b) Mediation shall be voluntary and freely agreed to by both parties, and shall not **deny or delay a parent's right to [**~~preclude the opportunity for~~**]** a due process hearing to be conducted at any time;

(c) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute;

(d) Mediators shall be trained in First Steps policies and procedures.

(3) The time table for the mediation process shall be:

(a) Within five (5) working days after a request for mediation is made to the department, the appointment of a mediator shall be made;

(b) Either party may waive the mediation and, if waived, the parents shall be informed by the department within two (2) working days of this decision;

(c) Mediation shall be completed within thirty (30) working days of the receipt by the department of the request for mediation;

(d) At any time during the mediation process, a request for a due process hearing may be initiated.

(e) A copy of the written resolution shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the department;

(4) Mediation resolutions may not conflict with state and federal laws and shall be to the satisfaction of both parties; satisfaction shall be indicated by the signature of both parties on the written resolution;

(5) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

Section 4. Due Process Procedures for Parents and Children. (1) Notice of provider's action shall be provided to the parent or guardian which shall include at least the following:

(a) A description of action by the provider with explanation, including a description of any options the provider considered and the reasons why those options were rejected;

(b) A description of each evaluation procedure, test, record report or other relevant factor the provider used as the basis for the action;

(c) A description of the parent or guardian's right to appeal and of the parent or guardian right to inspect provider records pertaining to the decision which is the subject of the notice of action.

(2) Appeal:

(a) At any time following receipt of a written notification by the provider relating to the identification, evaluation or provision of service to a child or anytime following a refusal by the provider to initiate a change in the identification, evaluation or service provided to a child, a parent or guardian may file an appeal with the Cabinet for Health and Family Services.

(b) Upon receipt of an appeal, the cabinet shall issue within five (5) days a notice of hearing conforming in accordance with KRS Chapter 13B.

(c) An administrative hearing shall be conducted within fifteen (15) days of receipt of an appeal by an impartial hearing officer appointed by the secretary of the cabinet.

(d) The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.

(e) A recommended decision conforming in content to the requirements of KRS 13B.110 shall be forwarded to the appellant and the cabinet within ten (10) days of the administrative hearing.

(f) All parties to the appeal shall have five (5) days to file written exceptions to the recommended decision.

(g) A final decision on the recommendation shall be made no later than forty-five (45) days following receipt of the appeal.

(h) Any parent involved in an administrative hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible for the First Steps Program;

2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

3. Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five (5) days before the proceeding;

4. Obtain a written or electronic verbatim transcription of the proceeding; and

5. Obtain written findings of fact and decisions.

(i) Any proceeding for implementing the complaint resolution process in Section 3 of this administrative regulation shall be held at a time and place that is reasonably convenient to the parent.

(j) Any party aggrieved by the findings and decision regarding an administrative hearing has the right to bring a civil action in state or federal court under section 639(a)(1) of the Pub.L. 108-446.

(k) During the pendency of any proceeding involving a hearing under Section 4 of this administrative regulation, unless the POE and parents of a child otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided. If the complaint involves an application for initial early intervention services, the child shall receive those services that are not in dispute.

(3) State Complaint Procedures.

(a) The following procedures shall apply to the Cabinet for Health and Family Services, Department for Public Health as to written complaints submitted pursuant to 34 C.F.R. 303.320 through 303.460. The complaint must include:

1. A statement that the state has violated a requirement or the regulations in this part; and

2. The facts on which the complaint is based.

(b) The alleged violation must have occurred not more than one (1) year before the date that the complaint is received by the Department for Public Health unless a longer period is reasonable because:

1. The alleged violation continues for that child or other children; or

2. The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three (3) years before the date on which the complaint is received by the Department for Public Health.

(c) Within sixty (60) calendar days after a complaint is filed, the Department for Public Health shall:

1. Carry out an independent on-site investigation, if the agency determines that such an investigation is necessary;

2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

3. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement the Kentucky Early Intervention System; and

4. Issue a written decision to the complainant that addresses each
allegation in the complaint and contains:

a. Findings of fact and conclusions; and

b. The reasons for the agency's final decision.

5. Permit an extension of the sixty (60) day time limit only if exceptional circumstances exist with respect to a particular complaint; and

6. Include procedures for effective implementation of the agency's final decision, if needed, including:

a. Technical assistance activities;

b. Negotiations; and

c. Corrective actions to achieve compliance.

7. If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the Department for Public Health must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the sixty (60) calendar-day timeline using the complaint procedures described in this section.

8. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

a. The hearing decision is binding; and

b. The agency must inform the complainant to that effect.

9. A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the Department for Public Health.

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

(a) "RF-1 Statement of Assurances", November 2008;

(b) "RF-4 Refusal of Services", November 2008;

(c) "RF-15 Notice of Action", January 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Mediation. (1) Mediation shall be adopted as an option to resolve complaints;~~

~~(2) Mediation shall be voluntary and freely agreed to by both parties, and shall not preclude the opportunity for a due process hearing to be conducted at any time;~~

~~(3) Unless the parent of a child and the cabinet otherwise agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute;~~

~~(4) The time table for the mediation process shall be:~~

~~(a) Within five (5) working days after a request for mediation is made to the cabinet, the appointment of a mediator shall be made;~~

~~(b) Either party may waive the mediation and if waived the parents shall be informed by the cabinet within two (2) working days of this decision;~~

~~(c) Mediation shall be completed within thirty (30) working days of the receipt by the cabinet of the request for mediation.~~

~~(d) At any time during the mediation process, a request for a due process hearing may be initiated;~~

~~(5) Mediation resolutions may not conflict with state or federal laws and shall be to the satisfaction of both parties; satisfaction shall be indicated by the signature of both parties on the written resolution;~~

~~(6) A copy of the written resolution shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the cabinet;~~

~~(7) Mediators shall be trained in First Steps policies and procedures.~~]

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: October 14, 2010
FILED WITH LRC: October 15, 2010 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502)564-3756 ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedural safeguards required by Part C of the Individuals with Education Act, Pub.L. 108-446, Section 639.

(b) The necessity of this administrative regulation: Procedural safeguards are a required state component under 34 C.F.R. 303.170.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650(6) requires the state to be in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides a description of the actions and requirements for the agency, early intervention provider and family while implementing procedural safeguards.

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

(a) How the amendment will change the existing administrative regulation: The amendments for this regulation reflect the state agency reorganization and practices in the districts.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to correctly reflect the state agency that is promulgating regulations and to be in compliance with federal statute and regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650 to 200.676 requires the cabinet to administer all funds appropriated to implement administrative regulations and promulgate regulations.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: The affected entities include: The Cabinet for Health and Family Services (one state agency), 15 points of entry/local lead agencies, 1,500 providers and 6,000 children and their families.

(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 Cabinet for Health and Family Services will need to be prepared to implement mediation and due process if this is requested by a family when trying to resolve conflicts surrounding the early intervention services for their child. The Points of Entry/Local Lead Agencies will need to understand how to protect eligible children's rights and process a request for mediation and due process with the Cabinet. Providers and families will need to know how to request mediation or due process from the Cabinet. All stakeholders will need to learn how to file written complaints.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to implement this regulation. The Cabinet has legal services as part of the administrative structure of the agency.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Families and providers will have rights protected and mediation and/or due process available when needed through the state lead agency.

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

(a) Initially: There are no costs to implement this regulation.

(b) On a continuing basis There are no costs to implement this

regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676

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? There will be no new revenue generated by this administrative regulation for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303 Subpart E-Procedural Safeguards outlines the states responsibilities in assuring the rights of children and parents who receive early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.672 charges the Cabinet for Health and Family Services, Department for Public Health to protect the rights of disabled child, parent, or guardian being served by the system.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to mirror the federal language regarding procedural safeguards the state will be in full compliance under this part of the federal statute.

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 than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Adult and Child Health Improvement
(Amended After Comments)

902 KAR 30:200. Coverage and payment for [~~Kentucky Early Intervention Program~~] Services.

RELATES TO: 34 C.F.R. 303.520, 303.521, 303.527, 303.528, 20 U.S.C. **1431-1444** **[**~~1371-1485~~**]**

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(3), (7), 34 C.F.R. 303.520-303.528, **1440** **[**~~20 U.S.C. 1476(a)(12), 1478~~**]**[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Public Health under the Cabinet for Health and Family Services.~~] KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made on behalf of eligible recipients.

Section 1. Participation Requirements. An early intervention provider that requests to participate as an approved First Steps provider shall comply with the following:

(1) Submit to an ongoing[~~annual~~] review by the Department for Public Health, or its agent, for compliance with 902 KAR Chapter 30[~~911 KAR Chapter 2~~];

(2)(a) Meet the qualifications for a professional or paraprofessional established in 902 KAR 30:150[~~911 KAR 2:150~~]; or

(b) Employ or contract with a professional or paraprofessional who meets the qualifications established in 902 KAR 30:150[~~911 KAR 2:150~~];

(3) Ensure that a professional or paraprofessional employed by the provider who provides a service in the First Steps Program shall attend training on First Steps' philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services;

(4) Agree to provide First Steps services as authorized by[~~according to~~] an individualized family service plan as required in 902 KAR 30:130[~~911 KAR 2:130~~];

(5) Agree to maintain and to submit as requested by the Department for Public Health required information, records, and reports to ensure[~~insure~~] compliance with 902 KAR Chapter 30[~~911 KAR Chapter 2~~];

(6) Establish a contractual arrangement with the Cabinet for Health and Family Services for the provision of First Steps services; and

(7) Agree to provide upon request information necessary for reimbursement for services by the Cabinet for Health and Family Services in accordance with this administrative regulation, which shall include the tax identification number and usual and customary charges.

Section 2. Reimbursement. The Department for Public Health shall reimburse a participating First Steps provider the lower of the actual billed charge for the service or the fixed upper limit established in this section for the service being provided.

(1) A charge submitted to the Department for Public Health

shall be the provider's usual and customary charge for the same service.

(2) The fixed upper limit for services shall be as follows:

(a) [~~Primary~~] Service coordination. Primary service coordination shall be provided by face-to-face contact or by telephone on behalf of a child, with the parent of the child, a professional or other service provider, or other significant person in the family's life.

1. In the office, the fee shall be sixty-two (62)[~~sixty-one (61)~~] dollars and fifty (50) cents per hour of service.

2. In the home or community site, the fee shall be eighty-five (85)[~~eighty-three (83)~~] dollars per hour of service.

(b) [~~Initial service coordination. Initial service coordination shall be provided by face-to-face contact or by telephone on behalf of a child, with the parent of the child, a professional or other service provider, or other significant person.~~

~~1. In the office, the fee shall be sixty-eight (68) dollars per hour of service.~~

~~2. In the home or community site, the fee shall be ninety-one (91) dollars per hour of service.~~

~~(c)~~] Primary level evaluation. The developmental component of the primary level evaluation for a child without an established risk [~~condition,~~] shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be $270 per service event.

2. In the home or community site, the fee shall be $270 per service event.

(c)[~~(d)~~] Five (5) Area Assessment. The developmental component of the primary level evaluation for the child with an established risk shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be $175 per service event;

2. In the home or community-based site, the fee shall be $175 per service event.

(d)[~~(e)~~] Record review. A record review shall be provided by a Department for Public Health approved team. The fee shall be $300 per service event.

(e)[~~(f)~~] Intensive clinic evaluation. The intensive level evaluation shall be provided by a Department for Public Health approved team and shall include face-to-face contact with the child and parent.

1. In the office or center-based site, which involves a board certified physician, the fee shall be $1,100 per service event.

2. In the community site, which involves a board certified physician, the fee shall be $1,100 per service event.

(f) Early[~~3. In the office or center-based site without a board certified physician, the fee shall be $400 per service event.~~

~~4. In the community site without a board certified physician, the fee shall be $400 per service event.~~

~~(g) Therapeutic~~] intervention, service assessment, or collateral services in accordance with Section 3(1), (2), (4) and (5)[~~(3), (4), (6) and (7)~~] of this administrative regulation:

1. For an audiologist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

2. For a family therapist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) per hour of service.

3. For a licensed **[**~~psychologist, a~~**]** psychological practitioner**, [**~~or~~**]** a licensed professional clinical counselor**, or certified psychologist with autonomous functioning**[~~, or certified psychologist with autonomous functioning~~]:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars[~~$139~~] per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars[~~$203~~] per hour of service.

4. For a **licensed [**~~certified~~**]** psychological associate **or a certified psychologist**:

a. In the office or center-based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be forty-six (46) dollars[~~$104~~] per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be seventy (70) dollars[~~$153~~] per hour of service.

5. For a developmental interventionist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

6. For a developmental associate[~~:a.~~] In a[~~the office or~~] center based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention service including cotreatment shall be twenty-four (24)[~~forty-five (45)~~] dollars per hour of service.[~~; or~~

~~b. In the home or community site, the fee for a collateral service or a therapeutic intervention including cotreatment shall be sixty-eight (68) dollars per hour of service.~~]

7. For a registered nurse:

a. In the office or center based site, the fee for a Service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

8. For a licensed practical nurse:

a. In the office or center based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be twenty-four (24) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be thirty-two (32) dollars per hour of service.

9. For a nutritionist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

10. For a dietitian:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

11. For an occupational therapist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of

service.

12. For an occupational therapist assistant:

a. In the office or center based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be forty-six (46) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be seventy (70) dollars per hour of service.

13. For an orientation and mobility specialist:

a. In the office or center-based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

14. For a physical therapist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

15. For a physical therapist assistant:

a. In the office or center based site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be forty-six (46) dollars per hour of service; or

b. In the home or community site, the fee for a collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be seventy (70) dollars per hour of service.

16. For a speech therapist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-three (63) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-nine (89) dollars per hour of service.

17. For a social worker:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

18. For a teacher of the deaf and hard of hearing:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

19. For a teacher of the visually impaired:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

20. For a physician or a nurse practitioner providing a collateral service in the office or center based site, the fee shall be seventy-six (76) dollars per hour of service. A physician or a nurse practitioner shall not receive reimbursement for early[~~therapeutic~~] intervention.

21. For an assistive technology specialist:

a. In the office or center based site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be sixty-one (61) dollars per hour of service; or

b. In the home or community site, the fee for a service assessment, collateral service or an early[~~a therapeutic~~] intervention including cotreatment shall be eighty-one (81) dollars per hour of service.

22. For an optometrist or ophthalmologist providing collateral service in an office of center based site, the fee shall be sixty-three (63) dollars per hour of service. An optometrist or ophthalmologist shall not receive reimbursement for early intervention.

(g)[~~(h)~~] Respite shall be seven (7) dollars and sixty (60) cents per hour.

(3)(a) For early[~~therapeutic~~] intervention, service assessment, or collateral services, **hours[~~units~~]** shall be determined using the beginning and ending time for a service [~~documented in staff notes~~].

1. Services shall be documented in the First Steps online data management system and shall include a list of all those present during the session, a description of the early intervention service(s) provided, the child's response, and future action to be taken.[~~The staff notes shall include:~~

~~a. The child's name and Central Billing and Information System number;~~

~~b. Time in and time out;~~

~~c. Location;~~

~~d. Method of delivery;~~

~~e. A description of what happened during the session, the child's response, and future action to be taken;~~

~~f. Staff title and signature; and~~

~~g. Date.~~]

2. The hours[~~units~~] shall be computed as follows:

a. Fifteen (15) to twenty-nine (29) minutes is equal to 0.25 hours[~~one (1) unit~~];

b. Thirty (30) to forty-four (44) minutes is equal to 0.50 hours[~~two (2) units~~];

c. Forty-five (45) to fifty-nine (59) minutes is equal to 0.75 hours[~~three (3) units~~]; and

d. Sixty (60) to seventy-four (74) minutes is equal 1.00 hour[~~four (4) units~~].

(b) For service coordination services, hours[~~units~~] shall be determined using the beginning and ending time for a service documented in staff notes in accordance with paragraph (a) of this subsection.

1. The hours[~~units~~] shall be computed as follows:

a. One (1) to twenty-two (22) minutes is equal to 0.25 hours[~~one (1) unit~~];

b. Twenty-three (23) to thirty-seven (37) minutes is equal to 0.50 hours[~~two (2) units~~];

c. Thirty-eight (38) to fifty-two (52) minutes is equal to 0.75 hours[~~three (3) units~~]; and

d. Fifty-three (53) to sixty-seven (67) minutes is equal to 1.00 hour[~~four (4) units~~].

2. Service coordination minutes spent over the course of a day on a child or family shall be accumulated at the end of the day in order to determine the total number of hours spent[~~number of units used~~].

(4) A payment for a primary or intensive evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service. No individual provider shall be reimbursed for participation on the intensive evaluation team.

(5) Payment for assistive technology devices shall be made in accordance with procedures[~~those~~] approved by the Department for Public Health.

(6) Payment for transportation shall be the lesser of the billed charge or:

(a) For a commercial transportation carrier, an amount derived by multiplying one (1) dollar by the actual number of loaded miles using the most direct route;

(b) For a private automobile carrier, an amount equal to twenty-five (25) cents per loaded mile transported; or

(c) For a noncommercial group carrier, an amount equal to fifty

(50) cents per eligible child per mile transported.

(7) A payment for a group intervention service shall be thirty-two (32) dollars per child per hour of direct contact service for each child in the group with a limit of three (3) eligible children per professional or paraprofessional who can practice without direct supervision.

Section 3. Limitations. (1) [~~For primary service coordination, payment shall be limited to no more than ten (10) hours (or forty (40) units) per child per six (6) month period unless preauthorized by the Department for Public Health. A prior authorization request to exceed service coordination limits shall be sent to the Department for Public Health, in accordance with Section 4 of this administrative regulation.~~

~~(2) For initial service coordination, payment shall be limited to no more than twenty-five (25) hours (or 100 units) per child per period of eligibility unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.~~

~~(3)~~] For service assessment:

(a) Payment shall be limited to no more than two (2) [~~and one-half (2 1/2)~~] hours per child per discipline per assessment unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.

(b) Payment for a discipline specific assessment shall be limited to three (3) assessments per discipline per child, unless additional hours are necessary based on the reasons listed in subsection (c) and documented in accordance with 902 KAR 30:130 Section 1(5)(a),(b),(c) from birth to the age of three (3) unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation; and[~~,~~]

(c)1. A service assessment payment shall not be made for the provision of routine early[~~therapeutic~~] intervention services by a discipline in the general practice of that discipline.

2. Payment for a [~~unit of~~] service assessment shall be restricted to the need[~~needs~~] for additional testing due to new concerns or significant change in the child's status[~~or other activity by the discipline that go beyond routine practice~~].

3. Routine activity of assessing progress and outcomes shall be billed as early[~~therapeutic~~] intervention.

(d) Payment shall be limited to an assessment provided as a face-to-face contact with the child and parent, and shall not exceed two (2) hours for each event.

(e) Payment for a service assessment of up to two (2) hours for each event for the purpose of the annual and exit progress monitoring five (5) area assessment shall be made to the primary service provider as approved by the IFSP team.

(2)[~~(4)~~] For early[~~therapeutic~~] intervention, unless prior authorized by the Department for Public Health in accordance with Section 4 of this administrative regulation, limitations for payment of services shall be as follows:

(a) For office, center or home and community sites:

1. Payment shall be limited to no more than one (1) hour per day per child per discipline by a:

a. Professional meeting the qualifications established in **902 KAR 30:150 [**~~911 KAR 2:150~~**]**; or

b. Paraprofessional meeting the qualifications established in **902 KAR 30:150 [**~~911 KAR 2:150~~**]**.

2. Payment shall be limited to no more than twenty-four (24) hours[~~ninety-six (96) units~~] for a single discipline and thirty-six (36) hours[~~144 units~~] for more than one (1) discipline during a six (6) month period and for group shall be limited to an additional forty-eight (48) hours[~~192 units~~] during a six (6) month period..

(b) For group:

1. Children shall not be eligible for both group and individual therapy in the same developmental domain concurrently on the Individualized Family Services Plan.

2. Group providers shall be preapproved by the Department for Public Health.

3. The ratio of staff to children in group early[~~therapeutic~~] intervention shall be limited to a maximum of three (3) children per professional and paraprofessional per group.

(c) Payment for siblings seen at the same time shall be calculated by dividing the total time spent by the number of siblings to get the amount of time to bill per child.

(d) Payment for a service shall be limited to a service that is authorized by the entire IFSP team in accordance with 902 KAR 30:130, Section 2(6) or (7)[~~911 KAR 2:130, Section 2(6) or (7)~~].

(e) Payment shall be limited to a service provided as a face-to-face contact with the child and either the child's parent or caregiver.

(3)[~~(5)~~] For respite, payment shall:

(a) Be limited to no more than eight (8) hours of respite per month, per eligible child;

(b) Not be allowed to accumulate beyond each month; and

(c) Be limited to families in crisis, or strong potential for crisis without the provision of respite.

(4)[~~(6)~~] For collateral services, payment for collateral services shall be a billable service for First Steps providers, who are providing early intervention services for the eligible child through an IFSP and paid by the First Steps system:

(a) Length of an IFSP meeting shall be limited to no more than one (1) hour[~~four (4) billable units~~];

(b) **Payment for** attendance at one (1) Admissions and Release Committee (ARC) meeting held prior to a child's third birthday shall be limited to the service coordinator and primary service provider[~~two (2) professionals or paraprofessionals~~] selected by the IFSP team;

(c) Participation at an initial IFSP meeting by a primary level evaluator shall be limited to an evaluator who has provided feedback and interpretation of the evaluation to the family prior to the IFSP meeting in accordance with 902 KAR 30:120, Section 1(4)(e)2b[~~911 KAR 2:120, Section 1(4)(e)2b~~]. Payment shall be at the collateral services rate for the discipline that the evaluator represents; and

(d) A face-to-face attendance at an IFSP meeting or a face-to-face or telephone consultation by a team member with a child's physician for developmentally-related needs shall be provided.

(5)[~~(7)~~] For cotreatment, payment shall be limited to three (3) disciplines providing services concurrently.

(6)[~~(8)~~] Unless prior authorized by the Department for Public Health due to a shortage of direct service providers[~~primary level evaluators~~], a primary level evaluator shall not be eligible to provide early[~~therapeutic~~] intervention to a child whom he evaluated and which resulted in the child becoming eligible.

Section 4. Prior Authorization Process. (1) Authorization[~~Requests~~] for payment for early[~~therapeutic~~] intervention services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the cabinet or its designee[~~Payment Authorization Coordinator~~], as determined by the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621 and approved[~~,~~] prior to the service being delivered and shall include the following:

(a) A service exception request completed in the First Steps online data management system;

(b)[~~describing:~~

~~1. Current IFSP team members;~~

~~2. Current services;~~

~~3. Description of current development status;~~

~~4. Family input;~~

~~5. Additional services requested; and~~

~~6. Rationale for the additional services;~~

~~(b) The medical component of the primary level evaluation in accordance with 911 KAR 2:120, Section 1(4)(e)1, which shall include the following:~~

~~1. History;~~

~~2. Physical exam;~~

~~3. Hearing screening;~~

~~4. Vision screening; and~~

~~5. Other available reports from medical specialists;~~

~~(c) Developmental evaluation reports in accordance with 911 KAR 2:120, Section 1(4)(e)2, which shall include the following:~~

~~1. Primary level evaluation report; and~~

~~2. Intensive level evaluation report, if applicable;~~

~~(d) IFSP team member reports completed within the last twelve (12) months by the disciplines involved, including:~~

~~1. Assessments; and~~

~~2. Six (6) month progress reports;~~

~~(e) IFSP documents from the last twelve (12) months, including amendments;~~

~~(f)~~] Payor of Last Resort Form, along with available supporting documentation, including:

1. Requests submitted to other payors; and

2. Responses from payor sources;

(c)[~~(g)~~] Transfer of Skills Form; and

(d)[~~(h)~~] Service Planning Activity Matrix Form.

(2) [~~Requests for payment for service coordination services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the Payment Authorization Coordinator, as determined by the Department for Public Health, prior to the service being delivered and shall include:~~

~~(a) A service exception request as required by subsection (1)(a) of this section;~~

~~(b) A copy of the current IFSP; and~~

~~(c) A detailed description of how and if the additional units are to be used.~~

~~(3)~~] If the IFSP team is not in agreement with the decision of the record review team:

(a) A request for further review shall be submitted to the Department for Public Health; and

(b) A three (3) person team from the Department for Public Health, Division of Maternal and Child Health, including the division director, shall render a recommendation.

(3)[~~(4)~~] If the IFSP team is not in agreement with the three (3) person team recommendation established in subsection (3)(b) of this section:

(a) The child's IFSP team shall be asked to reconvene for a IFSP meeting with a representative from the record review team and a representative from the three (3) member team; and

(b) If the IFSP team concludes at that IFSP meeting that the services are still needed, payment for the service shall be authorized for the duration of the current IFSP.

Section 5. Sliding Fee. (1) Families shall pay for services based on a sliding fee scale, except that a charge shall not be made for the following functions:

(a) Child find;

(b) Evaluation and assessment;

(c) Service coordination; and

(d) Administrative and coordinative activities including development, review, and evaluation of individualized family service plans, and the implementation of procedural safeguards.

(2) Payment of fees shall be for the purpose of:

(a) Maximizing available sources of funding for early intervention services; and

(b) Giving families an opportunity to assist with the cost of services if there is a means to do so, in a family share approach.

(3) The family share payment shall:

(a) Be explained to the family by the service coordinator;

(b) Be an income-based monthly fee, and with the exception established in paragraph (d) of this subsection, shall begin in the month of the IFSP, at the time early intervention[~~therapeutic~~] services are authorized, and continuing for the duration of participation in early intervention services, as determined by the:

1. Level of family gross income identified on the last Federal Internal Revenue Service statement or check stubs form the four (4) most recent consecutive pay periods, as reported by the family; and

2. Level of income matched with the level of poverty, utilizing the federal poverty measure, poverty guidelines as published annually by the Federal Department of Health and Human Services, based on the following scale:

a. Below 200 percent of poverty, there shall be no payment;

b. From 200 percent of poverty to 299 percent, the payment shall be twenty (20) dollars per month of participation;

c. From 300 percent of poverty to 399 percent, the payment shall be thirty (30) dollars per month of participation;

d. From 400 percent of poverty to 499 percent, the payment shall be forty (40) dollars per month of participation;

e. From 500 percent of poverty to 599 percent, the payment shall be fifty (50) dollars per month of participation; or

f. From 600 percent of poverty and over, the payment shall be $100 per month of participation;

(c) Not apply to a child receiving Medicaid or Kentucky Children's Health Insurance Program (KCHIP) benefits;

(d) Not apply to a family who receives only evaluation, assessment, service coordination services or IFSP development in the initial calendar month of eligibility. The [~~initial~~] service coordinator shall notify the Department for Public Health First Steps Family Share Administrator[~~financial case manager~~] immediately if the initial IFSP date is different than the month that early[~~therapeutic~~] intervention services are started;

(e) Not apply to a family that does not receive services except those described in paragraph (d) of this subsection for at least one (1) month if prior authorized by the Department for Public Health First Steps Family Share Administrator[~~financial case manager~~] in accordance with paragraph (g)1 and 2 of this subsection. A request shall not be submitted for a retroactive period unless an extenuating circumstance occurs **such** [~~such~~] as an unexpected hospitalization;

(f) Not apply to a family that receives evaluation, assessment, service coordination, or IFSP development if the developmental evaluation or assessment did not reveal a developmental delay. The service coordinator shall notify the Department for Public Health Family Share Administrator[~~financial case manager~~] immediately if this situation exists so that the family is not assessed a family share cost; and

(g) Not prevent a child from receiving services if the family shows to the satisfaction of the Department for Public Health an inability to pay, in accordance with the following:

1. The service coordinator shall submit to the Department for Public Health First Steps Family Share Administrator[~~financial case manager~~], on behalf of the family, a waiver request to have the amount of the family share payment reduced or eliminated for a period not to exceed three (3) calendar months. A request shall not be submitted for a retroactive period unless extenuating circumstances, such as an unexpected hospitalization, occurs; and

2. The family shall undergo a financial review by the Department for Public Health that may:

a.(i) Adjust the gross household income by subtracting extraordinary medical costs, equipment costs, exceptional child care costs, and other costs of care associated with the child's other family members' disabilities; and

(ii) Result in a calculation of a new family[**-**] share payment amount based on the family's adjusted income compared to the percentage of the poverty level established in paragraph (b)2 of this subsection. If a recalculation is completed, the Department for Public Health shall conduct a review at least quarterly; or

b. Suspend or reduce the family[**-**] share payment, based on a verified financial crisis that would be exacerbated by their obligated family share payment. The Department for Public Health shall conduct a review at least quarterly.[~~; and~~

~~(h) Not apply to a family who chooses to use their private insurance if the amount of the insurance monies received and applied to the family's services in the calendar year is equal to or greater than the sum of the obligated amount of family share during the same calendar year. Refunding of family share collected up to the amount of the private insurance reimbursement shall occur after the end of a calendar year.~~]

(4) Income and insurance coverage shall be verified at six (6) month intervals, and more often if changes in household income will[~~shall~~] result in a change in the amount of the obligated family share payment. [~~If a change in the family share category occurs, it shall become effective the month following the month the change was reported.~~]

(5) A family that refuses to have its income verified shall be assessed a family share payment of $100 per month of participation.

(6) If multiple children in a family receive early intervention services, the family share payment shall be the same as if there were one (1) child receiving services.

(7) If a family has the ability to pay the family share but refuses to do so for three (3) consecutive months, the family shall receive service coordination and assessment services only until discharged from the program or the family share balance is paid in

full, whichever occurs first.

(8) A family who chooses to use private insurance for payment of a First Steps service shall not be responsible for payment of insurance deductibles or copayments related to this service.

(9) With the exception of a discipline identified in 902 KAR 30:130, Section 2(7)(g)2j or k[~~911 KAR 2:130, Section 2(9)(g)3j, k, or l~~], a provider shall bill a third-party insurance, if any, for an early[~~a therapeutic~~] intervention service prior to billing First Steps. Documentation regarding the billing, the third-party insurance representative's response, and payment, if any, shall be maintained in the child's record and submitted through the First Steps data management system[~~with the First Steps bill~~].

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Transfer of Skills Form", November 2008 edition; and

(b) "Service Planning Activity Matrix Form", November 2008 edition.[~~"Technology-assisted Observation and Teaming Support form (TOTS)", November 2008 edition, is incorporated by reference.~~]

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

WILLIAM D. HACKER, MD, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 15, 2010 at 10 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff (502) 564-3756, ext 3973

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rates to be paid to providers for the provision of approved services (i.e. Physical Therapy, Occupational Therapy), sets forth limitations for billable services, and establishes processes for requesting services beyond set parameters and for assessing and collecting family participation payments.

(b) The necessity of this administrative regulation: The First Steps Program operates on a fee-for-service system requiring the establishment of rates for covered services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.660 assigns the Cabinet for Health and Family Services the duty of appropriately administering all funds related to the implementation of the First Steps Program. Further, KRS 200.660 directs the Cabinet for Health and Family Services to develop and implement a sliding fee scale in accordance with federal regulation, and contract with providers to provide First Steps services.

(d) How this administrative regulation currently assists in the effective administration of the statutes: This administrative regulation describes how the rate structure used by the Cabinet for Health and Family Services when contracting with service providers as well as the sliding fee scale.

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

(a) How the amendment will change the existing administrative regulation: The amendments to this administrative regulation provides updated rates for certain providers, requires that early intervention providers be in compliance with regulations and that providers maintain records that can be submitted to the department for monitoring. Rates for specific services are established and/or modified. Obsolete language is removed.

(b) the necessity of the amendment to this administrative regulation: The revisions to this administrative regulation are necessary to establish business rules for providers and establish rates of payments for services rendered. Obsolete language is removed to reflect current program structure and provide clarity.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.660 assigns the Cabinet for Health and Family Services the duty of appropriately administering all funds related to the implementation of the First Steps program. Further, KRS 200.660 directs the Cabinet for Health and Family Services to develop and implement a sliding fee scale in accordance with federal regulation, and contract with providers to provide First Steps services. KRS 200.650(6) and KRS 200.652(3) require a statewide comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure appropriate compensation to First Steps service provider and will assure that the Cabinet for Health and Family Services is administering the sliding fee scale in a manner consistent with federal regulation and intent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers of the amended rates will need to adjust their claims to reflect the changes. Licensed Professional Clinical Counselors (LPCC) and optometrists that want to provide service in First Steps will need to enroll.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Early Intervention System currently costs approximately $40 million dollars. The revisions to this administrative regulation do not cost the entities affected by the amended regulations any additional dollars.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system.

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

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal Part C funds and state general funds will be used to implement 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 change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation or its amendments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps Program as well as all providers participating in the First Steps Program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

regulation impacts the local Point of Entry, direct service providers as well as the state administrative office that governs the First Steps Program.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1471-1485, 34 C.F.R. Part 303, KRS 194A.050, 200.650-676.

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? There will be no revenue generated by this administrative regulation for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new expenditures to implement this administrative regulation during the subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISION

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.520 through 303.528 outlines the federal policies and procedures related to financial matters. It states that First Steps must be the payor of last resort. It also provides provisions for charging a family participation fee. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.674 charges the Cabinet for Health and Family Services, Department for Public Health in the use of early intervention funds.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation, Kentucky is in full compliance with the federal requirements to ensure First Steps is the payor of last resort for early intervention services.

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 than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Medical Management
(Amended After Comments)

907 KAR 1:019. Outpatient Pharmacy Program.

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.561, 205.5631-205.5639, 205.564, 205.6316, 205.8451, 205.8453, 217.015, 217.822, 42 C.F.R. 430.10, 431.54, 440.120, 447.331, 447.332, 447.333, 447.334, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396r-8[~~, Pub.L. 109-91~~]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.561, 205.5632, 205.5634, 205.5639(2), 205.564(10), (13), Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the G.A.

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program including the establishment of prior authorization procedures as authorized by KRS 205.5632, [~~and~~] Pharmacy and Therapeutics Advisory Committee provisions as authorized by KRS 205.564, tamper-resistant prescription requirements pursuant to 42 U.S.C. 1396b(i), and combats prescription fraud and abuse pursuant to KRS 205.8453.

Section 1. Definitions. (1) "Brand name drug" means the registered trade name of a drug which was originally marketed under an original new drug application approved by the Food and Drug Administration.

(2) "Commissioner" is defined by KRS 205.5631(1).

(3) "Covered drug" means a drug for which the Department for Medicaid Services provides reimbursement if medically necessary and if provided, but not otherwise excluded, in accordance with Sections 2 and 3 of this administrative regulation.

(4) "Covered outpatient drug" is defined by 42 U.S.C. 1396r-8(k)(2).

(5) "Department" means the Department for Medicaid Services or its designated agent.

(6)[~~(5)~~] "Department's pharmacy Internet Web site" or "Web site" means the Internet Web site maintained by the Department for Medicaid Services and accessible at http://www.chfs.ky.gov/dms/Pharmacy.htm [~~http://www.chfs.ky.gov/dms~~].

(7)[~~(6)~~] "Dosage form" means the type of physical formulation used to deliver a drug to the intended site of action, including a tablet, an extended release tablet, a capsule, an elixir, a solution, a powder, a spray, a cream, an ointment, or any other distinct physical formulation recognized as a dosage form by the Food and Drug Administration.

(8)[~~(7)~~] "Drug list" means the Department for Medicaid Services' list which:

(a) Specifies:

1. Drugs, drug categories, and related items not covered by the department; and

2. Covered drugs requiring prior authorization or having special prescribing or dispensing restrictions or excluded medical uses; and

(b) May include information about other drugs, drug categories, or related items and dispensing and prescribing information.

(9)[~~(8)~~] "Drug Management Review Advisory Board" or "DMRAB" or "board" means the board established pursuant to KRS 205.5636.

(10)[~~(9)~~] "Effective" or "effectiveness" means a finding that a pharmaceutical agent does or does not have a significant, clinically- meaningful therapeutic advantage in terms of safety, usefulness, or clinical outcome over the other pharmaceutical agents based on pertinent information from a variety of sources determined by the department to be relevant and reliable.

(11) "Emergency supply" means a seventy-two (72) hour supply.

(12) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(13)[~~(10)~~] "Food and Drug Administration" means the Food and Drug Administration of the United States Department of Health and Human Services.

(14)[~~(11)~~] "Generic drug" or "generic form of a brand name drug" means a drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug.

(15)[~~(12)~~] "Legend drug" means a drug so defined by the Food

and Drug Administration and required to bear the statement: "Caution: Federal law prohibits dispensing without prescription".

(16)[~~(13)~~] "Manufacturer" is defined in 42 U.S.C. 1396r-8(k)(5).

(17)[~~(14)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(18)[~~(15)~~] "Official compendia" or "compendia" is defined in 42 U.S.C. 1396r-8(g)(1)(B)(i).

(19)[~~(16)~~] "Over-the-counter drug" or "OTC drug" means a drug approved by the Food and Drug Administration to be sold without bearing the statement "Caution: Federal law prohibits dispensing without prescription".

(20)[~~(17)~~] "Pharmacy and Therapeutics Advisory Committee" or "committee" or "P&T Committee" means the pharmacy advisory committee established by KRS 205.564.

(21)[~~(18)~~] "Prescriber" means a health care professional who:

(a)[~~,~~] within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered;

(b) Is enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(c) Is currently participating in the Medicaid Program pursuant to 907 KAR 1:671.

(22)[~~(19)~~] "Recipient" is defined by KRS 205.8451(9).

(23)[~~(20)~~] "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(24)[~~(21)~~] "Supplemental rebate" means a cash rebate that offsets a Kentucky Medicaid expenditure and that supplements the Centers for Medicare and Medicaid Services National Rebate Program.

Section 2. Covered Benefits and Drug List. (1) A covered outpatient drug, nonoutpatient drug, or diabetic supply covered via this administrative regulation[~~drug covered through the Outpatient Pharmacy Program~~] shall be:

(a) Medically necessary;

(b) Approved by the Food and Drug Administration; and

(c) Prescribed for an indication that has been approved by the Food and Drug Administration or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use.

(2) A covered outpatient drug covered via this administrative regulation shall be prescribed on a tamper-resistant pad unless exempt pursuant to subsection (3) of this section.

(3) The tamper-resistant pad requirement established in subsection (2) of this section shall not apply to:

(a) An electronic prescription;

(b) A faxed prescription; or

(c) A prescription telephoned by a prescriber.

(4) To qualify as a tamper-resistant pad prescription, a prescription shall contain:

(a) One (1) or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(b) One (1) or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

(c) One (1) or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(5) The department shall cover the following diabetic supplies via the outpatient pharmacy program in accordance with this administrative regulation and not via the department's durable medical equipment program:

(a) A syringe with needle (sterile, 1cc or less);

(b) Urine test or reagent strips or tablets;

(c) Blood ketone test or reagent strip;

(d) Blood glucose test or reagent strips for home blood glucose monitor;

(e) Normal, low, or high calibrator solution, chips;

(f) Spring-powered device for lancet;

(g) Lancets per box of 100; or

(h) Home blood glucose monitor.

(6) The department shall have a drug list which:

(a) Lists:

1. Drugs, drug categories, and related items not covered by the department and, if applicable, excluded medical uses for covered drugs; and

2. Maintenance drugs covered by the department;

(b) Specifies those covered drugs requiring prior authorization or having special prescribing or dispensing restrictions;

(c) Specifies those covered drugs for which the maximum quantity limit on dispensing may be exceeded;

(d) Lists covered over-the-counter drugs;

(e) Specifies those legend drugs which are permissible restrictions under 42 U.S.C. 1396r-8(d), but for which the department makes reimbursement;

(f) [~~Specifies covered vaccines;~~

~~(g)~~] May include a preferred drug list of selected drugs which have a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate;

(g)[~~(h)~~] May be updated monthly or more frequently by the department; and

(h)[~~(i)~~] Shall be posted on the department's Internet pharmacy Web site.

(6)(a)[~~(3)~~] The department may implement drug treatment protocols requiring the use of medically-appropriate drugs which are available without prior authorization before the use of drugs which require prior authorization.

(b) The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from the requirement established in paragraph (a) of this subsection,[~~this requirement~~] based on documentation that drugs available without prior authorization:

(a) Were used and were not an effective medical treatment or lost their effectiveness;

(b) Are reasonably expected to not be an effective medical treatment;

(c) Resulted in, or are reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or

(d) Are medically contraindicated.

Section 3. Exclusions and Limitations. (1) The following drugs shall be excluded from coverage:

(a) A drug which the Food and Drug Administration considers to be:

1. A less-than-effective drug; or

2. Identical, related, or similar to a less-than-effective drug;

(b) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered in the drug list:

1. A drug if used for anorexia, weight loss, or weight gain;

2. A drug if used to promote fertility;

3. A drug if used for cosmetic purposes or hair growth;

4. A drug if used for the symptomatic relief of cough and colds;

5. [~~A drug if used to promote smoking cessation;~~

~~6.~~] Vitamin or mineral products other than prenatal vitamins and fluoride preparations;

6.[~~7.~~] An over-the-counter drug provided to a Medicaid nursing facility service recipient. An over-the-counter drug provided to a Medicaid nursing facility service recipient shall be considered a routine service which is already included in a nursing facility's reimbursement and shall be excluded from coverage via the Medicaid Outpatient Pharmacy Program;

7.[~~8.~~] A barbiturate;

8.[~~9.~~] A benzodiazepine;

9.[~~10.~~] A drug which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or

10.[~~11.~~] A drug utilized for erectile dysfunction therapy unless the drug is used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the United States Food and Drug Administration;

(c) A drug for which the manufacturer has not entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a), unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to make payment for the drug and federal financial participation is available for the drug;

(d) Except in accordance with subsection (7) of this section, a drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;

(e) A drug for which the department requires prior authorization if prior authorization has not been approved; and

(f) A drug that has reached the manufacturer's termination date, indicating that the drug may no longer be dispensed by a pharmacy.

(2) If authorized by the prescriber, a prescription for a:

(a) Controlled substance in Schedule III-V may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required; or

(b) Except as prohibited in subsection (4), of this section, non-controlled substance may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) For each initial filling or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is designated in the department's drug list as a drug exempt from the thirty-two (32) day dispensing limit in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on the Drug Prior Authorization Request Form (MAP-82001) and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is impractical for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply; or

(d) The prescription fill is for an outpatient service recipient, excluding an individual who is receiving supports for community living services in accordance with 907 KAR 1:145.

(4) A prescription fill for a maintenance drug for an outpatient service recipient who has demonstrated stability on the given maintenance drug, excluding an individual receiving supports for community living services in accordance with 907 KAR 1:145, shall be dispensed in a ninety-two (92) day supply unless:

(a) The department determines that it is in the best interest of the recipient to dispense a smaller supply; or

(b) The recipient is covered under the Medicare Part D benefit in which case the department shall not cover the prescription fill.

(5) The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs; however, the department may exempt a compounded drug or compounded drug category from prior authorization if there has been a review and determination by the department that it is in the best interest of a recipient for the department to make payment for the compounded drug or compounded drug category.

(6) A prescriber shall make his or her national provider identifier (NPI) available to a pharmacist, and the prescriber's NPI shall be recorded on a pharmacy claim.

(7)(a)[~~An identification number shall be made available by a prescriber and shall be recorded on the pharmacy claim in accordance with the following:~~

~~(a) The medical license number of a physician for the state in which the physician practices or, for a physician who does not have a Kentucky state medical license number on file and who is enrolled in an approved graduate medical education program, the medical license number of the supervising physician;~~

~~(b) The license number, including applicable alpha characters, of a dentist, optometrist, or podiatrist for the state in which the individual practices;~~

~~(c) The registration number, including applicable alpha characters, of an advanced registered nurse practitioner registered in Kentucky or the registration number or license number, including applicable alpha characters, of an out-of-state advanced registered nurse practitioner for the state in which the individual practices; or~~

~~(d) The certification number, including applicable alpha characters, of a physician assistant for the state in which the individual practices.~~

~~(7) If it is determined by the department to be in the best interest of a recipient, the department may designate a legend drug that may be provided through prior authorization to a recipient in an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.~~

~~(8) A recipient who has been restricted to a single pharmacy in accordance with 907 KAR 1:677 shall be required to obtain non-emergency pharmacy services from the pharmacy to which the recipient has been restricted.~~

~~(9)(a)~~] Except as provided in paragraph (b), (c), or (d) of this subsection, the department shall cover no more than a total of four (4) prescriptions, of which no more than three (3) shall be brand name prescriptions per recipient per month.

(b) The four (4) prescription limit shall not apply if the recipient:

1. Is under nineteen (19) years of age;

2. Uses insulin for the management of diabetes; or

3. Is a nursing facility resident who does not have Medicare Part D drug coverage.

(c) A pharmacist may utilize a four (4) prescription limit override code for a recipient whose prescription will exceed the four (4) prescription limit if the prescription is prescribed:

1. For any of the following conditions:

a. Acute infection or infestation;

b. Bipolar disorder;

c. Cancer;

d. Cardiac rhythm disorder;

e. Chronic pain;

f. Coronary artery or cerebrovascular disease (advanced arthrosclerotic disease);

g. Cystic fibrosis;

h. Dementia;

i. Diabetes;

j. End stage lung disease;

k. End stage renal disease;

l. Epilepsy;

m. Hemophilia;

n. HIV or AIDS or immunocompromised;

o. Hyperlipidemia;

p. Hypertension;

q. Major depression;

r. Metabolic syndrome;

s. Organ transplant; or

t. Psychotic disorder[~~;~~

~~u. Schizophrenic disorder; or~~

~~v. Schizotypal personality disorder~~]; or

2. As part of:

a. Acute therapy for migraine headache or acute pain; or

b. Suppressive therapy for thyroid cancer.

(d) An additional prescription or prescriptions may be covered if the department determines that it is in the best interest of the recipient to cover an additional prescription or prescriptions whether brand name or generic.

(8)[~~(10) Until close of business February 28, 2006, but no later than that date, the department shall cover unlimited generic prescriptions per member per month in accordance with the requirements and limitations established in this administrative regulation.~~

~~(11)~~] The department shall cover up to three (3) brand name prescriptions per member per month unless the department determines that it is in the best interest of the member to cover any additional brand name prescriptions.

(9)[~~(12)~~] A refill of a prescription shall not be covered unless at least ninety (90)[~~eighty (80)~~] percent of the prescription**, except for a refill for a recipient who is a resident of a personal care home or a resident of a facility reimbursed pursuant to 907 KAR 1:025 or 1:065,** time period has elapsed.

(b) A refill of a prescription for a recipient who is a resident of a facility or entity referenced in paragraph (a) of this subsection shall not be covered unless at least eighty (80) percent of the prescription time has lapsed.

Section 4. Prior Authorization Process. (1)(a) To request prior authorization for a drug:

1. The applicable form shall be completed and submitted to the department:

a. By fax, mail, express delivery service, or messenger service to the department; or

b. Via the department's pharmacy Internet Web site; or

2. A requester may provide the information required on the applicable form to the department verbally via the telephone number published on the department's pharmacy Internet Web site.

(b)[~~, the applicable Drug Prior Authorization Request Form, PPI and H2 Blocker Request Form, or the Brand Name Drug Request Form shall be completed and sent by fax or, if necessary, via the Web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents, by mail, express delivery service, or messenger service to the department.~~] If drug therapy needs to be started on an urgent basis to avoid jeopardizing the health of a[~~the~~] recipient or to avoid causing substantial pain and suffering, the completed request form may be sent to the department's urgent fax number or submitted to the department via the department's pharmacy Internet Web site.

(2) A Drug Prior Authorization Request Form:

(a) Shall be used by a prescriber or pharmacist to request prior authorization for a drug except for **[**~~a PPI/H2 blocker,~~**]** a brand name drug, **Suboxone®, Subutex®, Zyvox®,** or an atypical antipsychotic agent;

(b) Shall be used by a pharmacist to request an early refill of a prescription; or

(c) May be used by a pharmacist[~~Web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents. A request shall be submitted in accordance with the following:~~

~~(a) Drug Prior Authorization Request Form. This form shall be used by the prescriber or the pharmacist to request prior authorization for a drug other than a drug classified as a proton pump inhibitor or a H2 receptor blocker or for a brand name only request if the generic form of the drug is available. This form may also be used by the pharmacist~~] to obtain prior authorization for special dispensing requests involving exceptions to the thirty-two (32) day maximum quantity limit including additional drugs needed for travel or other valid medical reasons.

(3)(a) A Brand Name Drug Request Form, except as established in paragraph (c) of this subsection, shall be used by a prescriber to request prior authorization for a brand name drug if a generic form of the drug is available.

(b) Regarding a Brand Name Drug Request Form, a prescriber shall:

1. Complete the form;

2. Include on the form:

a. The handwritten phrase "band medically necessary" or "brand necessary"; and

b. The provider's signature for each specific drug requested; and

3. Indicate:

a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and

b. Why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(c) Submission of a Brand Name Drug Request Form shall not be required if:

1. The department has specifically exempted the drug, via the drug list, from this requirement; or

2.a. It has been determined by the department to be in the best interest of a recipient not to require submission of a Brand Name Drug Request Form; or

b. The prescriber certifies that the brand name drug is medically necessary in accordance with subsection (9) of this section.

(d) In addition to the requirements established in paragraphs (a) through (c) of this subsection, the prescriber certify a brand name only request by including for each brand name drug requested, the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:

1. The prescription;

2. The nursing facility order sheet; or

3. A separate sheet of paper that includes the name of the recipient and the brand name drug requested and is attached to the original prescription or nursing facility order sheet.

(4) A Mental Health Drug Authorization Request Form for Atypical Antipsychotic Agents shall be:

(a) Used to request prior authorization for an atypical antipsychotic drug; and

(b) Completed and submitted as directed on the form.

(5) A Suboxone® and Subutex® Prior Authorization Request Form shall be:

(a) Used to request prior authorization for Suboxone® or Subutex®; and

(b) Completed and submitted as directed on the form.

(6) A Zyvox® (linezolid) Drug Authorization Request Form shall be:

(a) Used to request prior authorization for Zyvox®; and

(b) Completed and submitted as directed on the form.

(7) A Synagis® Prior Authorization Request Form shall be:

(a) Used to request prior authorization for Synagis®; and

(b) Completed and submitted as directed on the form.

(8)[~~(b) Brand Name Drug Request Form. Except as provided in paragraphs (c) and (d) of this subsection, this form shall be used by the prescriber to request prior authorization for a brand name only request if the generic form of the drug is available, unless the department has specifically exempted the drug from the requirement to use this form. The prescriber shall:~~

~~1. Complete a Brand Name Drug Request Form;~~

~~2. Include on the Brand Name Drug Request Form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested; and~~

~~3. Indicate on the Brand Name Drug Request Form:~~

~~a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and~~

~~b. Why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.~~

~~(c) A Brand Name Drug Request Form shall not be required if:~~

~~1. It has been determined by the department to be in the best interest of a recipient not to require completion of a Brand Name Drug Request Form; and~~

~~2. The prescriber certifies that the brand name is medically necessary in accordance with subsection (3) of this section.~~

~~(d) PPI and H2 Blocker Request Form. This form shall be used to request prior authorization for a drug classified as a proton pump inhibitor or a H2 receptor blocker. This form may also be used for a brand name only request if the generic form of the proton pump inhibitor or H2 receptor is available and the prescriber completes the applicable section of the form and:~~

~~1. Includes on the form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested;~~

~~2. Indicates whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and~~

~~3. Indicates why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.~~

~~(2)~~] If a recipient presents a prescription to a pharmacist for a drug which requires prior authorization, the pharmacist:

(a) Shall, unless the form is one (1) which has to be completed by the prescriber, submit a request for prior authorization in accordance with [~~subsection (1) of~~] this section;

(b) Shall notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization and:

1. If the prescriber indicates that a drug list alternative available without prior authorization is acceptable and provides a new prescription, shall dispense the drug list alternative; or

2. If the prescriber indicates that drug list alternatives available without prior authorization have been tried and failed or are clinically inappropriate or if the prescriber is unwilling to consider drug list alternatives, shall:

a. Request that the prescriber obtain prior authorization from

the department; or

b. Unless the form is one (1) which has to be completed by the prescriber, submit a prior authorization request in accordance with [~~subsection (1) of~~] this section; or

(c) Except as restricted by subparagraphs 3 and 4 of this paragraph, may provide the recipient with an emergency supply of the prescribed drug in an emergency situation in accordance with all of the following:

1. The emergency situation shall:

a. Occur outside normal business hours of the department's drug prior authorization office, except for medications dispensed to a long term care recipient in which an emergency supply may be dispensed after 5 p.m. EST; and

b. Exist if, based on the clinical judgment[~~judgement~~] of the dispensing pharmacist, it would reasonably be expected that, by a delay in providing the drug to the recipient, the health of the recipient would be placed in serious jeopardy or the recipient would experience substantial pain and suffering;

2. At the time of the dispensing of the emergency supply, the pharmacist shall in accordance with [~~subsection (1) of~~] this section:

a. Submit a prior authorization request to the department's urgent fax number or to the department via the department's pharmacy Internet Web site[~~Web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents.asp~~]; or

b. If applicable, notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department;

3. An emergency supply shall not be provided for an over-the-counter (OTC) drug;

4. An emergency supply shall not be provided for a drug excluded from coverage in accordance with Section 3(1) (a), (b) or (c) of this administrative regulation; and

5. The quantity of the emergency supply shall be:

a. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or

b. The amount prescribed if it is not feasible for the pharmacist to dispense just a seventy-two (72) hour supply because the drug is packaged in such a way that it is not intended to be further divided at the time of dispensing but rather dispensed as originally packaged.

(9) If a prescriber submits a prescription to a pharmacy via telephone, the prescriber shall also fax the prescription **for a controlled substance** to the pharmacy within forty-eight (48) hours of submitting it via telephone.

(10)[~~(3) In addition to the requirements of subsection (1) of this section, the prescriber shall be required to certify a brand name only request by including for each brand name drug requested the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:~~

~~(a) The prescription;~~

~~(b) The nursing facility order sheet; or~~

~~(c) A separate sheet of paper which includes the name of the recipient and the brand name drug requested and is attached to the original prescription or nursing facility order sheet.~~

~~(4)~~] The department's notification of a decision on a request for prior authorization shall be made in accordance with the following:

(a) If the department approves a prior authorization request, notification of the approval shall be provided by telephone, fax or via the department's pharmacy Internet Web site [~~Web-based application located at the Web site of http://kentucky.fhsc.com/providers/documents.asp~~] to the party requesting the prior authorization and, if known, to the pharmacist.

(b) If the department denies a prior authorization request:

1. The department shall provide a denial notice:

a. By mail to the recipient and in accordance with 907 KAR 1:563; and

b. By fax, telephone, or if necessary by mail to the party who requested the prior authorization.

(11)(a)[~~(5)~~] The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 days.

(b) Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.

(12)[~~(6)~~] Prior authorization of drugs for a Medicaid long-term care recipient in a nursing facility shall be in accordance with the following:

(a) The department may specify in its drug list specific drugs or drug classes which shall:

1. Not be exempted from prior authorization; or

2. Be exempt from prior authorization for Medicaid recipients in nursing facilities.

(b) A brand name drug for which the department requires completion by the prescriber of a Brand Name Drug Request Form in accordance with this section shall not be exempted from prior authorization.

Section 5. Placement of Drugs on Prior Authorization. (1) Except as excluded by Section 3(1)(a) to (c) of this administrative regulation, upon initial coverage by the Kentucky Medicaid program, a drug that is newly approved for marketing by the Food and Drug Administration under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity shall be subject to prior authorization in accordance with KRS 205.5632.

(2) Upon request by the department, a drug manufacturer shall provide the department with the drug package insert information.

(3) The drug review process to determine if a drug shall require prior authorization shall be in accordance with the following:

(a) The determination as to whether a drug is in an excludable category specified in Section 3(1) of this administrative regulation shall be made by the department.

1. If a drug, which has been determined to require prior authorization becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug the new strength, package size, or other form shall require prior authorization.

2. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendial or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization in accordance with Section 4 of this administrative regulation, unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to cover the drug without prior authorization.

(b) The committee shall make a recommendation to the department regarding prior authorization of a drug based on:

1. A review of clinically-significant adverse side effects, drug interactions and contraindications and an assessment of the likelihood of significant abuse of the drug; and

2. An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and whether the drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of federal rebate and supplemental rebate dollars.

(c)1. Within thirty (30) days of the date the committee's recommendation is posted on the department's pharmacy Internet Web site, the secretary, in consultation with the commissioner and the department's pharmacy staff[~~director~~], shall review the recommendations of the committee and make the final determination whether a drug requires prior authorization.

2. If the recommendation of the committee is not accepted, the secretary shall inform the committee of[~~present~~] the basis for the final determination in accordance with Section 8(3) of this administrative regulation.

(4) The department may exclude from coverage or require prior authorization for a drug which is a permissible restriction in accordance with 42 U.S.C. 1396r-8(d).

Section 6. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and

(b) The person gives notice to the department (and gives a copy to the DMRAB chairperson) by fax or email at least five (5)

business days[~~Written notice has been given to the chairperson at least twenty-four (24) hours~~] prior to the meeting.

(2) A verbal presentation:

(a) In aggregate per drug per drug manufacturer shall not exceed **three (3) minutes with two (2) additional minutes allowed for questions from the DMRAB, if required[**~~five (5) minutes~~**]**; or

(b) By an individual on a subject shall not exceed five (5) minutes[~~The DMRAB may establish time limits for presentations~~].

(3) The proposed agenda shall be posted on the department's pharmacy Internet Web site at least **fourteen (14) days[**~~five (5) days~~**]** prior to the meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5639(5). The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

Section 7. Pharmacy and Therapeutics Advisory Committee Meeting Procedures. (1) A P&T Committee meeting agenda shall be posted as required by KRS 205.564(6).

(2) A P&T committee meeting shall be conducted in accordance with KRS 205.564.

(3) A public presentation at a P&T Committee meeting shall comply with the following:

(a)1. A verbal presentation in aggregate per drug per drug manufacturer shall not exceed **three (3) minutes with two (2) additional minutes allowed for questions from the P&T Committee, if required[**~~five (5) minutes~~**]**;

2. A verbal presentation by an individual on a subject shall not exceed five (5) minutes[~~The time limit for a verbal presentation shall not exceed five (5) minutes in aggregate per drug per manufacturer or five (5) minutes by an individual speaking on a particular position~~];

3.[~~2.~~] A request to make a verbal presentation shall be submitted in writing via fax or e-mail to the department with a copy to the chair of the P&T Committee no later than five (5) business days[~~forty-eight (48) hours~~] in advance of the P&T Committee meeting;

4.[~~3.~~] An individual may only present new information (package insert changes, new indication or peer-reviewed journal articles) on a product or information on a new product; and

5.[~~4.~~] A presentation shall be limited to an agenda item; or

(b) Nonverbal comments, documents, or electronic media material (limited to package insert changes, new indication, or peer reviewed journal articles) shall be:

1.a. E-mailed to the department in a Microsoft compatible format (for example, Word, Power Point, Excel or other standard file formats including Adobe Acrobat's pdf format); or

b. Mailed to the department with a total of twenty-five (25)[~~eighteen (18)~~] copies mailed so that the department may distribute copies to P&T Committee members as well as to any other involved parties; and

2. Received by the department no later than seven (7) days prior to the P&T Committee meeting.

(4) The department may prepare written recommendations or options for drug review for the committee and shall post them as required by KRS 205.564(6).

(5) A recommendation by the committee shall require a majority vote.

(6) Recommendations of the committee shall be posted as required by KRS 205.564(8).

(7) A drug manufacturer may request that its name be placed on the department's distribution list for agendas of committee meetings. Placement of a drug manufacturer's name on the distribution list shall be valid through December 31 of each year, at which time the drug manufacturer shall be required to again request placement on the distribution list. To request placement of the drug manufacturer's name on the distribution list, the drug manufacturer shall submit the request in writing to the department and shall provide the following information about the drug manufacturer:

(a) Manufacturer's name;

(b) Mailing address;

(c) Telephone number;

(d) Fax number;

(e) E-mail address; and

(f) Name of a contact person. [~~(8) A drug manufacturer may be requested to submit a supplemental rebate proposal to the department based on a medication to be discussed at a designated P&T meeting.~~

~~(9) A supplemental rebate proposal submitted to the department shall be provided to P&T members during a closed session.~~]

Section 8. Review and Final Determination by the Secretary. (1) An interested party who is adversely affected by a recommendation of the committee may submit a written exception to the secretary in accordance with the following:

(a) The written exception shall be received by the secretary within seven (7) calendar days of the date of the committee meeting at which the recommendation was made; and

(b) Only information that was not available to be presented at the time of the committee's meeting shall be included in the written exception.

(2) After the time for filing written exceptions has expired, the secretary shall consider the recommendation of the committee and all exceptions that were filed in a timely manner prior to making a final determination. The secretary shall issue a final determination, and public notice of the final determination shall be posted on the department's pharmacy Internet Web site for six (6) months after which a copy of the final determination may be requested from the department.

(3) The secretary shall make a final determination in accordance with KRS 205.564(9).

(4) A final determination by the secretary may be appealed in accordance with KRS Chapter 13B. A decision of the secretary to remand the recommendation to the committee shall not constitute a final decision for purposes of an appeal pursuant to KRS Chapter 13B. An appeal request shall:

(a) Be in writing;

(b) Be sent by mail, messenger, carrier service, or express-delivery service to the secretary in a manner that safeguards the information;

(c) State the specific reasons the final determination of the secretary is alleged to be erroneous or not based on the facts and law available to the committee and the secretary at the time of the decision;

(d) Be received by the secretary within thirty (30) days of the date of the posting of the final determination on the department's pharmacy Internet Web site; and

(e) Be forwarded by the secretary to the Administrative Hearings Branch of the Cabinet for Health and Family Services for processing in accordance with the provisions of KRS Chapter 13B.

Section 9. Confirming Receipt of Prescription. (1) A recipient, or a designee of the recipient, shall sign their name **in a format which allows their signature to be reproduced or preserved[**~~on a log~~**]** at a pharmacy confirming that the recipient received the prescription.

(2) A pharmacist shall maintain, or be able to produce a copy of, a log of recipient signatures referenced in subsection (1) of this section, for at least six (6) years.

Section 10. Exemptions to Prescriber Requirements. The department shall reimburse for:

(1) A full prescription prescribed by a provider who is not enrolled in the Kentucky Medicaid Program, if the department determines that reimbursing for a full prescription is in the best interest of the recipient; or

(2) An emergency supply of a prescription prescribed by a provider who is not enrolled in the Kentucky Medicaid Program, if the department determines that reimbursing for the emergency supply is in the best interest of the recipient.

Section 11. Federal Financial Participation. A provision estab-

lished in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision; or

(2) Disapproves the provision.

Section 12. Appeal Rights. A Medicaid recipient may appeal the department's denial, suspension, reduction, or termination of a covered drug or decision regarding the amount of a drug dispensed based upon an application of this administrative regulation in accordance with 907 KAR 1:563.

Section 13.[~~10.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Drug Prior Authorization Request Form", May 15, 2007 edition;

(b) "Brand Name Drug Request Form", May 15, 2007 edition;

(c) "Mental Health Drug Authorization Request Form for Atypical Antipsychotic Agents", May 15, 2007 edition;

(d) "Subaxone® and Subutex® Prior Authorization Request Form", September 22, 2009 edition;

(e) "Zyvox® (linezolid) Drug Authorization Request Form", January 11, 2010 edition; and

(f) "Synagis® Prior Authorization Request Form", September 16, 2009 edition. [~~"MAP-82001 Drug Prior Authorization Request Form, October 18, 2004, edition"; and~~

~~(b) "MAP-82101 Brand Name Drug Request Form, October 18, 2004, edition"; and~~

~~(c) "MAP-012802 PPI and H2 Blocker Request Form, October 18, 2004, edition".~~]

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED: October 14, 2010

FILED WITH LRC: October 14, 2010 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lee Barnard, Trista Chapman, or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for coverage of drugs through Medicaid's outpatient pharmacy program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions for coverage of drugs through Medicaid's outpatient pharmacy program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions for coverage of drugs through Medicaid's outpatient pharmacy program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the provisions for coverage of drugs through Medicaid's outpatient pharmacy program.

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

(a) How the amendment will change this existing administrative regulation: This amendment implements various Medicaid pharmacy program efficiencies as mandated by Part I, G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA. The amended regulation requires prescribers to be Kentucky Medicaid Program providers; increases the period before a prescription can be refilled from after 80 percent of the prescription period has lapsed to 90 percent; reimburses for diabetic supplies via the pharmacy program rather than the durable medical equipment program in order to procure rebates for the items; updates forms used for prior authorization purposes; establishes that a recipient must sign a log at the pharmacy to confirm receipt of a prescription and requires that requests to present at a Drug Management Review Advisory Board (DMRAB) or Pharmacy and Therapeutics (P& T) Committee meeting must be submitted at least five (5) business days in advance. Additionally, the amendment complies with 42 U.S.C. 1396b(i), which contains a provision requiring Medicaid-reimbursed providers to use tamper-resistant prescription drug pads in their prescribing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA by implementing pharmacy program efficiencies.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA by implementing Medicaid pharmacy program efficiencies.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA by implementing Medicaid pharmacy program efficiencies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid-reimbursed prescribing providers are affected by this amendment and recipients are affected as well.

(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 be required to use tamper-resistant prescription drug pads in their prescribing and non-Medicaid providers will have to enroll in Kentucky's Medicaid program in order to prescribe controlled substances for Kentucky Medicaid recipients. Medicaid recipients will have to sign, at the pharmacy, confirming their receipt of prescriptions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Medicaid-reimbursed prescribing providers may experience costs associated with purchasing tamper-resistant prescription drug pads.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers who comply will receive reimbursement for Medicaid recipient prescriptions and recipients will receive prescriptions.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that the efficiencies, in aggregate, implemented via the amendment will reduce DMS expenditures by approximately $15.7 million (state and federal share combined) annually.

(b) On a continuing basis: DMS estimates that the efficiencies, in aggregate, implemented via the amendment will reduce DMS expenditures by approximately $15.7 million (state and federal share combined) annually.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in

this administrative regulation as the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396b(i)(23).

2. State compliance standards. KRS 205.560 establishes "The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section."

3. Minimum or uniform standards contained in the federal mandate. Prescriptions, if not executed electronically, must be executed on a tamper resistant pad.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal law or regulation does not require a prescriber to be a provider enrolled in the given state's Medicaid program, but DMS is implementing this requirement.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. DMS is implementing the requirement that a prescriber be an enrolled Medicaid program provider in order to prevent recipient from doctor shopping in order to procure additional drugs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all Medicaid-reimbursed prescribing providers as well as non-Medicaid providers who are accustomed to prescribing controlled substances for Medicaid recipients.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA, KRS 194A.010(1), 194A.030(2), 205.520(3), 205.560(1), 205.8453, 42 U.S.C. 1396b(i)(23) and 1396r-8.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to implement this amendment during the first year. The Department for Medicaid Services (DMS) estimates that the efficiencies, in aggregate, implemented via the amendment will reduce DMS expenditures by approximately $15.7 million (state and federal share combined) annually.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to implement this amendment during subsequent years. The Department for Medicaid Services (DMS) estimates that the efficiencies, in aggregate, implemented via the amendment will reduce DMS expenditures by approximately $15.7 million (state and federal share combined) annually.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Medical Management
(Amended After Comments)

907 KAR 1:677. Medicaid recipient lock-in program.

RELATES TO: KRS 205.8453, 21 C.F.R. 1308.12, 1308.13, 1308.14, 42 C.F.R. 431.54, 433.111(b), 42 U.S.C. 1396(a), 1396(a)(2)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6318, 205.6310, 205.8453, 42 C.F.R. 431.54, Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.8453(4) and 205.6318(6) direct the cabinet to promulgate administrative regulations to identify misutilization of Medicaid services, to institute other measures necessary or useful in controlling fraud and abuse. This administrative regulation establishes[~~sets forth~~] the Medicaid lock-in provisions relating to recipient overutilization of the Medicaid Services [~~Program~~].

Section 1. Definitions. "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Cabinet" is defined by KRS 205.010(1).

(3) "Controlled substance" means a drug or substance identified in 21 C.F.R. 1308.12, 1308.13, or 1308.14.

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

(5) "Emergency medical condition" is **defined by 42 U.S.C. 1395dd(e).[**~~:~~

~~(a) Defined by 42 U.S.C. 1395dd(e); and~~

~~(b) Identified in the department's Table of Lock-In Emergency Medical Conditions.~~**]**

(6) "Emergency service" **is defined by 42 C.F.R. 447.53.[**~~means a service:~~

~~(a) Defined by 42 C.F.R. 447.53; and~~

~~(b) For a condition listed in the Table of Lock-in Emergency Medical Conditions.~~**]**

(7) "Fraud" is defined by KRS 205.8451(2).

(8) "Lock-in program" means a department program which restricts a recipient to receiving Medicaid services from a designated provider.

(9) "**Kentucky All Schedule Prescription Electronic Reporting report" or "KASPER report" means a report displaying information regarding:**

(a) All the scheduled prescriptions that an individual has had for the time period specified in the report;

(b) The prescriber for each prescription written for the individual during the time period specified in the report; and

(c) The dispenser who dispensed each prescription written for the individual during the time period specified in the report.

(10) "Lock-in recipient" means a recipient enrolled in the lock-in

program.

(11)[~~(10)~~**]** "Medicaid Management Information System" means the department's mechanized claims processing and information retrieval system as defined by, and in accordance with, 42 C.F.R. 433.111(b).

(12)[~~(11)~~**]** "Nonemergency care" means a service for a nonemergency condition.

(13)[~~(12)~~**]** "Overutilization" means the receipt of a treatment, drug, medical supply, or other Medicaid service from one (1) or more providers in an amount, duration, or scope that exceeds the amount that would reasonably be expected to result in a medical or health benefit to the recipient.

(14)[~~(13)~~**]** "Physician" is defined by KRS 311.550(12).

(15)[~~(14)~~**]** "Physician assistant" or "PA" is defined by KRS 311.840(3).

(16)[~~(15)~~**]** "Prescriber" means a physician who:

(a) Within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered;

(b) Is enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(c) Is currently participating in the Medicaid Program pursuant to 907 KAR 1:671.

(d) Prescribes in accordance with his or her current registration with the U.S. Department of Justice's Drug Enforcement Administration.

(17)[~~(16)~~**]** "Primary care provider" means an advanced **practice** registered nurse**[**~~practitioner~~**]**, a physician, or physician assistant.

(18)[~~(17)~~**]** "Provider" is defined by KRS 205.8451(7).

(19)[~~(18)~~**]** "Provider abuse" is defined by KRS 205.8451(8).

(20)[~~(19)~~**]** "Recipient" is defined by KRS 205.8451(9).

(21)[~~(20)~~**]** "Recipient abuse" is defined by KRS 205.8451(10)

(22)[~~(21)~~**]** "Utilization review" means a department review and analysis:

(a) Of Medicaid claims for a twelve (12) consecutive month period including:

1. A recipient's medical conditions; and

2. Medicaid services received by the recipient; and

(b) To determine if recipient overutilization has occurred.

Section 2. Review of Complaints. (1)**(a)** A complaint relating to potential fraud, recipient abuse, provider abuse, or overutilization shall be reported to the department or Cabinet for Health and Family Services, Office of Inspector General via the Medicaid and Welfare Fraud and Abuse hotline at 1-800-372-2970.

(b) The department may also review data available to it to determine if potential fraud, recipient abuse, provider abuse, or overutilization has occurred regardless of whether or not a complaint was made regarding a given individual or provider.

(2) The department shall respond to a complaint **or data review** referenced in subsection (1) of this section by conducting a utilization review of the recipient.

(3) A utilization review of a recipient referenced in subsection (2) of this section shall include a review of**[**~~paid~~**]** claims using data collected from the Medicaid Management Information System **or a KASPER report** to identify if the recipient:

(a) Utilized Medicaid services at a frequency or amount which meets **utilization** criteria established in Section 4 of this administrative regulation; and

(b)1. Shall be **restricted to receiving Medicaid services from designated providers under the lock-in program.[**~~enrolled in the lock-in program to manage nonmedically necessary overutilization of Medicaid services by the recipient; or~~**]**

2. Shall **be excluded from[**~~not be enrolled in~~**]** the lock-in program if the recipient:

a. Resides in a **facility reimbursed pursuant to 907 KAR 1:025 or 1:065 or in a personal care home.[**~~long term care nursing facility;~~**]**

b. Is under the age of eighteen (18) years;

c. Receives**:**

(i) Services through a home and community based waiver program in accordance with 907 KAR 1:145, 1:160, 1:595, 1:835, 3:090, or 3:210; or

(ii) Hospice services.[~~Medicare benefits; or~~**]**

d. **[**~~Over~~**]**Utilized Medicaid services **at a frequency or amount which was medically necessary[**~~necessarily~~**]** to treat a complex**, life threatening medical condition as determined by the department.[**~~health condition, as determined by the department's licensed pharmacist, physician, and registered nurse.~~**]**

Section 3. General Exemption. If the department determines that not enrolling a recipient in the lock-in program is in the best interest of the recipient, the department shall not enroll the recipient in the lock-in program.

Section 4. Lock-in Criteria. **(1)** Except as established in Section 2(3)(b)2 and Section 3 of this administrative regulation, the department shall initiate the lock-in process, as established in Section 5 of this administrative regulation, for a recipient if **in two (2) consecutive 180 calendar day periods the recipient:**

(a)1. Received services from at least five (5) different providers;

2. Received at least ten (10) different prescription drugs; and

3. Received prescriptions from at least three (3) or more different pharmacies; or

(b)1. Had at least four (4) hospital emergency department visits for a condition that was not an emergency medical condition; or

2. Received services from at least three (3) different hospital emergency departments for a condition that was not an emergency medical condition.

(2)[~~(1) At least two (2) of the following situations occurred in any two (2) ninety (90) calendar day periods within twelve (12) consecutive months:~~

~~(a) The recipient received services from at least eight (8) different providers, including a physician, advanced registered nurse practitioner, or physician assistant;~~

~~(b) The recipient received at least fifteen (15) prescription drugs;~~

~~(c) The recipient received prescriptions from at least eight (8) different prescribers;~~

~~(d) The recipient received the same services from at least two (2) different providers within the same day;~~

~~(e) The recipient had at least twelve (12) office visits;~~

~~(f) The recipient received services from at least three (3) different physicians, ARNPs, or PAs:~~

~~1. Of the same type or specialty; and~~

~~2. For the same or a similar diagnosis; or~~

~~(g) The recipient received at least four (4) prescriptions for different controlled substances as identified in the department's Lock-in Table Controlled Substances; or~~

~~(2) At least one (1) of the following conditions occurred in any two (2) ninety (90) calendar day periods within twelve (12) consecutive months:~~

~~(a) The recipient had at least four (4) hospital emergency department visits for a condition that was not an emergency medical condition;~~

~~(b) The recipient received services from at least three (3) different hospital emergency departments for a condition that was not an emergency medical condition;~~

~~(c) The recipient had prescriptions for the same drugs dispensed on the same or subsequent day at least twice;~~

~~(d) The recipient received drugs from at least three (3) different pharmacies;~~

~~(e) The recipient received at least twenty-four (24) prescriptions;~~

~~(f) The recipient received a prescription for a controlled substance, as identified the department's Lock-in Table of Controlled Substances from at least two (2) different prescribers;~~

~~(g) The recipient had duplicative or contraindicated utilization of:~~

~~1. Medications, medical supplies, or appliances dispensed by or prescribed by at least two (2) prescribers; or~~

~~2. Medical visits, procedures, or diagnostic tests from at least two (2) providers; or~~

~~(h) The recipient received at least twelve (12) prescriptions for~~

~~a controlled substance as identified in the department's Lock-in Table of Controlled Substances.~~

~~(3)~~**]** A recipient shall be locked in to**:**

(a) One (1) primary care provider, one (1) controlled substance prescriber, and one (1) pharmacy if the recipient meets the criteria established in subsection (1)(a) of this section; or

(b) One (1) designated hospital for nonemergency care, except for a screening to determine if an emergency medical condition exists pursuant to 907 KAR 1:014, if the recipient meets the criteria established in subsection (1)(b) of this section.[~~one (1) designated hospital for nonemergency care, except for a screening to determine if an emergency medical condition exists pursuant to 907 KAR 1:014, if the recipient:~~

~~(a) Meets the lock-in utilization criteria pursuant to subsection (1) or (2) of this section; and~~

~~(b) Meets the criteria in subsection(2)(a)(b) of this section.~~**]**

Section 5. Lock-in Process. Upon identification of a recipient who shall be enrolled in the lock-in program in accordance with Section 2(3)**[**~~(a)(b)1.~~**]** of this administrative regulation, the department shall:

(1) Send a written notification to the recipient, which includes:

(a)**[**~~A brief summary of the recipient's utilization review findings:~~

~~(b)~~**]** The reason for enrolling the recipient in the lock-in program;

(b)[~~(c)~~**]** A description of the lock-in program;

(c)[~~(d)~~**]** The effective date of lock-in program enrollment;

(d)[~~(e)~~**]** Identification of the recipient's designated providers as established in subsection (2)(a) of this section;

(e)[~~(f)~~**]** Information relating to the recipient's right to a hearing as established in Section 9 of this administrative regulation; and

(f)[~~(g)~~**]** Contact information of an individual who may be contacted in writing or by telephone for information relating to the lock-in program; and

(2) Except for a recipient who requests a hearing relating to a department lock-in determination, enroll the recipient in the lock-in program within thirty (30) days of sending the written notification referenced in subsection (1) of this section by:

(a) Restricting the lock-in recipient to receiving **Medicaid[**~~nonemergency care and~~**]** services**[**~~for conditions which are not emergency medical conditions~~**]** from designated providers including:

1. One (1) primary care provider who:

a. Shall be accessible to the recipient within normal time and distance standards for the community in which the recipient resides;

b. If the lock-in recipient has a designated hospital**[**~~in accordance with subparagraph 4 of this paragraph:~~

~~(i) Shall have inpatient admission privileges at the recipient's designated hospital, or;~~

~~(ii) If the primary care provider does not have admission privileges at the recipient's designated hospital, shall have an arrangement with a provider who does have inpatient admission privileges at the recipient's designated hospital~~**]**;

c. Shall provide services and manage the lock-in recipient's necessary health care services;

d. If the lock-in recipient needs a Medicaid-covered service other than the service of the designated primary care provider, shall complete and forward a Lock-in Recipient Referral to a referred provider;

e. Shall participate in the recipient's periodic utilization review as identified in subsection (2)(c) of this section; and

f. If the designated primary care provider is a physician, may serve as the lock-in recipient's designated controlled substance prescriber;

2. One (1) controlled substance prescriber who shall serve as the sole prescriber and manager of controlled substances for the lock-in recipient; and

3. One (1) pharmacy; and

4. If the recipient meets the criteria established in Section **4(2)[**~~4(3)~~**]** of this administrative regulation, one (1) hospital;

(b) Maintaining the restrictions identified in paragraph (a) of this subsection for at least twenty-four (24) months; and

(c) Following the initial twenty-four (24) month period of lock-in enrollment as established in paragraph (b) of this subsection, conducting a utilization review at twelve (12) month intervals to:

1. Measure the effectiveness of the recipient's enrollment in the lock-in program; and

2. Determine if the recipient shall:

a. Continue enrollment in the lock-in program if the recipient **continues to meet the criteria established in Section 4(1) of this administrative regulation[**~~(i) Does not use a designated provider; or~~

~~(ii) Meets the criteria as established in Section 4 of this administrative regulation~~**]**; or

b. Be **discharged from the lock-in program if the recipient[**~~disenrolled if the recipient:~~

~~(i) Uses a designated provider; and~~

~~(ii)~~**]** does not meet the criteria established in Section 4 of this administrative regulation; and

(d) Providing the lock-in recipient with a written notification**, which includes:**

1. Findings of a utilization review as identified in paragraph (c) of this subsection; and

2. A decision to maintain enrollment in or discharge the recipient from the lock-in program.[~~of the findings of a utilization review as identified in paragraph (c) of this subsection, including:~~

~~1. A decision to maintain enrollment in or disenrollment from the lock-in program; and~~

~~2. Appeal rights in accordance with Section 9 of this administrative regulation.~~**]**

Section 6. Designated Providers. **(1)** A designated provider as identified in Section 5(2)(a) shall **be[**~~serve as~~**]** a designated provider of a lock-in recipient for at least twenty-four (24) months except for the following situations:

(a)1.[~~(1)~~**]** The designated provider**[**~~:~~

~~(a)~~**]** submits to the department a written request for a release from serving as the recipient's designated provider**;**

2. In the scenario describe in subparagraph 1 of this paragraph, the provider shall continue to serve[~~; and~~

~~(b)~~ ~~Serves~~**]** as the recipient's designated provider until a comparable designated provider may be selected;

(b)[~~(2)~~**]** The recipient relocates outside of the designated provider's geographic area;

(c)[~~(3)~~**]** In accordance with Section 8(3) of this administrative regulation, the recipient submits a written request to the department which:

1.[~~(a)~~**]** Requests a designated provider change; and

2.[~~(b)~~**]** Includes information to support cause or a necessary reason for the change, including the recipient:

a.[~~1.~~**]** Was denied access to a needed medical service;

b.[~~2.~~**]** Received poor quality of care; or

c.[~~3.~~**]** Does not have access to a provider qualified to treat the recipient's health care needs;

(d)[~~(4)~~**]** The designated provider withdraws or is terminated from participation in the Medicaid Program; or

(e)[~~(5)~~**]** The department determines that it is in the best interest of the lock-in recipient to change the designated provider.

(2) A designated provider for a recipient shall:

(a) Be chosen by the department; and

(b) Not be chosen by the recipient.

(3) A recipient shall not have more than one (1) change in a designated provider within a twenty-four (24) month period:

(a) Unless the department determines that an additional change would be in the best interest of the recipient; or

(b) Except as allowed in subsection (1) of this section.

Section 7. Fees, Payments, and Nonpayments. (1) On behalf of a lock-in recipient, the department shall pay:

(a) At the beginning of each month:

1. A fee of ten (10) dollars to a designated primary care provider for the management of a lock-in recipient's necessary health care**;**

2. A fee of five (5) dollars to a designated controlled substance prescriber; or

3. No more than ten (10) dollars to a designated controlled

substance prescriber if the prescriber is also the lock-in recipient's designated primary care provider;[~~and~~

~~2. Except for a designated controlled substance prescriber who also serves as a lock-in recipient's designated primary care provider, a fee of five (5) dollars to a designated controlled substance prescriber;~~**]** and

(b) For:

1. A medical screening examination performed in the emergency department of a hospital to determine if an emergency medical condition exists **in accordance with 907 KAR 1:014**; and

2. An emergency service.

(2) In addition to the fee established in subsection (1)(a)1. of this section, the department shall pay for necessary services provided to the recipient by the recipient's designated primary care provider.

(3) Except for a service as established in subsection (1)(b) of this section, the department shall not pay for a service rendered by a provider other than the recipient's designated primary care provider unless the designated primary care provider:

(a) Refers the recipient to the referred provider for a necessary service; and

(b) Completes and forwards a copy of the Lock-in Recipient Referral to the referred provider of the service.

Section 8. Lock-in Recipient Requirements. A lock-in recipient:

(1) Shall be restricted to receiving necessary nonemergency **[**~~health care~~**]** services from a designated provider as identified in Section 5(2)(a) of this administrative regulation except for services rendered by a referred provider in accordance with Section 7(3) of this administrative regulation;

(2) Shall be responsible for the payment of a service rendered by a provider who:

(a) Is not the recipient's designated primary care provider;

(b) Does not have a Lock-in Recipient Referral from the recipient's designated primary care provider; and

(c) Informs the lock-in recipient that the recipient shall be responsible for the costs of the provider's services before the service is rendered; and

(3) May request a change of a designated provider in accordance with Section 6(3) of this administrative regulation:

(a) Within ninety (90) days of the date of the recipient notification letter as identified in Section 5(1) of this administrative regulation; or

(b) At least once in a twelve (12) month period following initial enrollment in the lock-in program.

Section 9. Appeal Rights. **(1)** A recipient who is notified of a department decision to enroll or maintain enrollment of the recipient in the lock-in program, shall have the right to request a hearing **in accordance with this section.**

(2) The subject of a hearing shall be limited to whether or not the department had sufficient evidence to support the department's decision.

(3) A request for a hearing shall be:

(a) In writing;

(b) Mailed to the department, to the attention of the commissioner; and

(c) Received by the department within thirty (30) calendar days from the date that the notice referenced in subsection (1) of this section was received by the recipient.

(4) A copy of a request for a hearing shall be mailed to and received by the department's Division of Program Integrity within thirty (30) calendar days from the date that the notice referenced in subsection (1) of this section was received by the recipient.

(5) If a request for a hearing which meets the criteria established in subsection (2) of this section is:

(a) Received by the department within ten (10) calendar days from the date that the recipient received a notice referenced in subsection (1) of this section, the lock-in action shall be delayed until a fair hearing has occurred; or

(b) Not received by the department within ten (10) calendar days from the date that the recipient received a notice referenced in subsection (1) of this section, the lock-in action shall not be delayed.

(6) A fair hearing shall be held in accordance with 907 KAR 1:563, Sections 6 through 15.[~~in accordance with 907 KAR 1:563.~~**]**

Section 10. Fraud and Abuse Referral. If fraud, provider abuse, or recipient abuse is identified in the course of a department utilization review for lock-in purposes, the department shall comply with KRS 205.8453(3).

Section 11. Incorporation by Reference. (1) The**[**~~following is incorporated by reference:~~

~~(a) The "Lock-in Table of Controlled Substances", April 2010 edition;~~

~~(b) The "Table of Lock-in Emergency Medical Conditions", April 2010 edition; and~~

~~(c)~~**]**The "Lock-in Recipient Referral", June 2010 edition**, is incorporated by reference**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6C-C, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.[~~(1) "Department" means the Department for Medicaid Services and its designated agents.~~

~~(2) "Emergency services" means services for a medical condition for which a delay in treatment will likely result in the recipient's death, irreparable harm, immediate grave bodily harm, a life-threatening condition or permanent impairment of the recipient's health.~~

~~(3) "Fraud" means as defined in KRS 205.8451.~~

~~(4) "Immediate grave bodily harm" means the condition that would result from failure to provide emergency services for an emergency medical condition.~~

~~(5) "Irreparable harm" means a medical condition characterized by chronic illness or body impairment which may result from a failure to provide medical services on an immediate or emergency basis.~~

~~(6) "Life-threatening condition" means a medical condition which may result in the death of the individual unless medical services are provided on an immediate or emergency basis.~~

~~(7) "Lock-in" means as defined in 907 KAR 1:002.~~

~~(8) "Nonlife-threatening condition" means a medical condition which would not result in the death of the individual if medical services are not provided on an immediate or emergency basis.~~

~~(9) "Overutilization" means as defined in 907 KAR 1:002.~~

~~(10) "Provider" means as defined in KRS 205.8451.~~

~~(11) "Recipient abuse" means as defined in KRS 205.8451.~~

~~Section 2. Lock-in Program. (1) All complaints concerning possible recipient abuse or overutilization of Medicaid services by eligible recipients shall be referred to the department for investigation. A potential Medicaid Program abuser or overutilizer may be identified by:~~

~~(a) Caseworkers;~~

~~(b) Providers, including those that provide emergency services;~~

~~(c) The Attorney General's office;~~

~~(d) Hotline referrals;~~

~~(e) Surveillance and utilization review system reports showing utilization which exceeds a norm by at least a standard deviation; or~~

~~(f) Other staff or outside sources.~~

~~(2) If a recipient is identified as needing an overutilization review, an analysis shall be made of that recipient's utilization of Medicaid services. If the review reveals that an individual has utilization that may be warranted in view of the individual's medical diagnosis, complicating conditions and treatment regime, the review shall be closed.~~

~~(3) If the review reveals that an individual does not have a medical condition, complicating condition or treatment regime to warrant the individual's higher than normal utilization, a second level review and investigation shall be conducted to determine if the recipient has overutilized or abused the Medicaid Program.~~

~~(4) Recipient overutilization or abuse of the Medicaid Program may be:~~

~~(a) Intentional; or~~

~~(b) May result from a lack of knowledge by the recipient regarding the proper use of medical services.~~

~~(5) If overutilization or abuse is determined to be the result of a lack of recipient knowledge regarding proper use of medical services, a letter shall be sent to the recipient advising of:~~

~~(a) The dangers of inappropriate utilization of medical services; and~~

~~(b) The importance of having one (1) physician responsible for directing an individual's medical care.~~

~~(6) If the overutilization or abuse is determined to be intentional The department shall notify the recipient in writing of the pending lock-in action. The letter shall:~~

~~(a) Explain the right to a hearing regarding the proposed lock-in decision in accordance with Section 3 of this administrative regulation; and~~

~~(b) Inform recipient of the date their lock-in status shall be implemented, if a hearing is not requested.~~

~~(7) If a hearing is requested with regard to the proposed lock-in, action shall not be taken to lock the recipient in until a final hearing decision upholding the proposed lock-in action has been made.~~

~~(8) A recipient who has been identified as intentionally abusing or overutilizing the Medicaid Program based on an analysis of the recipient's medical history and utilization patterns shall be locked in to Medicaid providers including:~~

~~(a) A physician; and~~

~~(b) A pharmacy.~~

~~(9) The lock-in physician and pharmacy shall be selected by the department. The selected providers shall be accessible within normal time and distance standards for the community in which the recipient lives.~~

~~(10) A recipient identified as abusing or overutilizing the program shall be locked in for a minimum of twelve (12) months. After the lock-in period, periodic determinations to be performed every twelve (12) months or more frequently, as needed, shall be made to:~~

~~(a) Determine the effectiveness of the lock-in; and~~

~~(b) Determine whether the lock-in status shall continue for another twelve (12) month period.~~

~~(11) Lock-in physicians shall serve as case managers for referrals to all health facilities and services, except for emergency services. A case management fee of ten (10) dollars shall be paid to the lock-in physician at the beginning of each month for each assigned lock-in recipient.~~

~~(12) Designated lock-in providers shall remain effective for twelve (12) months. Changes in lock-in providers shall be permitted only upon:~~

~~(a) The request of the lock-in provider;~~

~~(b) If the recipient moves out of the lock-in providers area;~~

~~(c) If the recipient can show that it is inappropriate for him to be locked-in to a specific provider;~~

~~(d) If the lock-in provider withdraws from the Medicaid Program; or~~

~~(e) For the convenience of the department.~~

~~(13) The department shall consider whether or not a physician has contributed to overutilization when determining the selection for a lock-in physician or pharmacist.~~

~~(14) Except as provided for in subsection (15) of this section, a Medicaid payment shall not be made on behalf of a lock-in recipient for the following:~~

~~(a) Physician services provided by other than the lock-in physician or other medical services or supplies which have not been preauthorized through a referral from the lock-in physician;~~

~~(b) Prescription drugs prescribed by other than the lock-in physician or a physician authorized by the lock-in physician;~~

~~(c) Pharmacy services provided by other than the lock-in pharmacy; or~~

~~(d) Emergency services provide for a nonlife-threatening condition or a condition that would not result in irreparable harm without prior approval of the lock-in provider, unless the provider has made a reasonable effort to obtain prior approval from the lock-in provider.~~

~~(15) Emergency services may be provided to prevent the death, irreparable harm, immediate grave bodily harm, a life-threatening condition, or a permanent impairment of the recipient's health without prior approval of the lock-in provider.~~

~~(16) The recipient shall be issued a lock-in Medicaid identification card which specifies the designated lock-in providers and lock-in limitations.~~

~~Section 3. Appeal Rights. A recipient who receives advance notice of a decision to place him in lock-in status shall have the right to request a hearing in accordance with 907 KAR 1:563 prior to lock-in action by the department.~~

~~Section 4. Fraud and Abuse Referral. At any point if a determination is made that fraud, or abuse involving a substantial allegation or indication of fraud, has likely occurred, the recipient's case shall be referred for investigation in accordance with KRS 205.8453(3) and 205.8465.~~]

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED: October 14, 2010

FILED WITH LRC: October 14, 2010 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Brenda Parker or Lee Barnard (502) 564-9444, or Stuart Owen (502) 564-2015

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky Medicaid Program's lock-in provisions. The program locks recipients who have excessively utilized Medicaid services into receiving services from a few select providers. If the individual attempts to receive services from a provider who is not one of their lock-in providers, the Department for Medicaid Services (DMS) will not reimburse for the service except for emergency care.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.8453 regarding utilization, fraud and abuse and to ensure that the funds allocated to Kentucky's Medicaid Program are properly expended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030(2), 194A.050(1), 205.520(3) and 205.8453 by establishing Medicaid lock-in requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of KRS 194A.030(2), 194A.050(1), 205.520(3) and 205.8453 by establishing Medicaid lock-in requirements. 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 hospitals (for nonemergency care) and controlled substance prescribers to the types of lock-in providers; establishes detailed lock-in criteria; establishes a lock-in referral form to be used by the recipient's designated primary care provider; and establishes a five (5) dollar payment per month for controlled substance prescribers. The amendment also entails language and formatting revisions to comply with KRS Chapter 13A requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to reduce excessive Medicaid utilization in accordance with KRS 205.8453, 205.6310, and with 42 C.F.R. 431.54 and to implement pharmacy efficiencies as mandated by Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the GA.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to 205.8453 and KRS 205.6310 by reducing excessive Medicaid utilization and to Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly by incorporating pharmacy efficiencies.

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

ministration of KRS 205.8453 and KRS 205.6310 by reducing excessive Medicaid utilization and with Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly by incorporating pharmacy efficiencies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients who excessively utilize Medicaid services and providers who serve these Medicaid recipients will be affected by the amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Medicaid recipients who are locked in to certain providers will have to ensure that they only seek Medicaid services from their designated lock-in providers in order to ensure that DMS will pay for the services they received. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the entities identified in question (3). As a result of compliance, what benefits will accrue to the entities identified in question (3). Regulated individuals will have the benefit of appropriately utilizing Medicaid services. Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: DMS will experience a small costs due to the five (5) dollars a month payments to controlled substance prescribers; however, DMS projects that the amendment will reduce costs by $5 million (federal and state combined) annually.

(b) On a continuing basis: DMS will experience a small costs due to the $5 a month payments to controlled substance prescribers; however, DMS projects that the amendment will reduce costs by $5 million (federal and state combined) annually.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it is applicable 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? The Department for Medicaid Services (DMS) will be impacted by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.8453, 205.6310, Part I.G.3.b.(26) of HB 1 of the 2010 Extraordinary Session of the General Assembly, and 42 C.F.R. 431.54.

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? DMS anticipates no revenue being generated for the first year for state or local government due to the amendment to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates no revenue being generated for subsequent years for state or local government due to the amendment to this administrative regulation.

(c) How much will it cost to administer this program for the first year? DMS foresees some administrative costs will be necessary to implement the changes; however, DMS projects saving approximately $5 million (federal and state funds combined) annually as a result of the amendment.

(d) How much will it cost to administer this program for subsequent years? DMS foresees some administrative costs will be necessary to implement the changes; however, DMS projects saving approximately $5 million (federal and state funds combined) annually as a result of the amendment.

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

Revenues (+/-):

Expenditures (+/-):

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Recipient lock-in is not mandated but is authorized by 42 C.F.R. 431.54.

2. State compliance standards. KRS 205.8453 states,

"It shall be the responsibility of the Cabinet for Health and Family Services and the Department for Medicaid Services to control recipient and provider fraud and abuse by:

(1) Informing recipients and providers as to the proper utilization of medical services and methods of cost containment;

(2) Establishing appropriate checks and audits within the Medicaid Management Information System to detect possible instances of fraud and abuse;

(3) Sharing information and reports with other departments within the Cabinet for Health and Family Services, the Office of the Attorney General, and any other agencies that are responsible for recipient or provider utilization review; and

(4) Instituting other measures necessary or useful in controlling fraud and abuse." KRS 205.520(3) states, "to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

KRS 205.6310 states,

"The Cabinet for Health and Family Services shall establish a system within the Medical Assistance Program to reduce unnecessary hospital emergency room utilization and costs by redefining and controlling hospital emergency utilization. The cabinet shall establish by promulgation of administrative regulations, pursuant to KRS Chapter 13A, the following:

(1) Criteria and procedures, at least annually updated, that differentiate children and adults, and which conform to the Federal Emergency Medical Treatment and Active Labor Act (42 U.S.C. sec. 1395dd), as amended, and any other applicable federal law or regulation for determining if a medical emergency exists;

(2) Reimbursement rates that provide for nominal reimbursement of emergency room care for care that does not meet the criteria established for a medical emergency;

(3) Reimbursement, at rates determined by the cabinet, for ancillary services which, based upon the symptoms of the patient, are medically appropriate to determine if a medical emergency exists;

(4) Except for emergency room services rendered to children under the age of six (6), prohibition of reimbursement at hospital emergency room rates for diagnosis and treatment

for a condition that does not meet the criteria established for a medical emergency; and

(5) The provisions of this section shall apply to any managed care program for Medicaid recipients."

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 431.54 authorizes the locking in of recipients but requires the Medicaid agency to give recipients notice and a hearing opportunity prior to any lock-in action, requires that recipients have reasonable access to services and exempts emergency services from being locked in.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Recipient lock-in is not mandated but is authorized by 42 C.F.R. 431.54. The amendment complies with the federal requirements established in 42 C.F.R. 431.54.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Recipient lock-in is not mandated but is authorized by 42 C.F.R. 431.54 so one could argue that it is stricter as it is not mandatory. The amendment complies with the federal requirements established in 42 C.F.R. 431.54.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Community Alternatives
(Amended After Comments)

907 KAR 3:090. Acquired brain injury waiver services.

RELATES TO: KRS 205.5605, 205.5606, 205.5607, 205.8451, 205.8477, 42 C.F.R. 441.300 - 310, 42 C.F.R. 455.100 - 106,[~~42 C.F.R. 441 Subpart G, 455 Subpart B,~~] 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community-based services waivers. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services and including a consumer-directed services program pursuant to KRS 205.5606. The purpose of acquired brain injury waiver services is to rehabilitate and retrain an individual with an acquired brain injury to reenter and function independently within a community, given the community's existing resources.

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

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

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

(4) "Acquired Brain Injury Branch" or "ABIB" means the Acquired Brain Injury Branch of the Department for Medicaid Services' Division of Community Alternatives.

(5) "Acquired brain injury waiver service" or "ABI waiver service" means a home and community based waiver service for an individual who has acquired a brain injury to his or her central nervous system of the following nature:

(a) Injury from a physical trauma;

(b) Damage from anoxia or a hypoxic episode; or

(c) Damage from an allergic condition, toxic substance, or another acute medical incident.

(6) **"Advanced practice registered nurse" is defined by KRS 314.l011(7).**

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

(a) Completed on a MAP-351;

(b) Submitted to the department:

1. For a level of care determination; and

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

(8)[~~(7)~~][~~(6)~~] "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an ABI recipient.

(9)[~~(8)~~][~~(7) "BISB" or "brain injury service branch", Division of Long Term Care and Community Alternatives, Cabinet for Health and Family Services means the brain injury service branch.~~

~~(8)~~] "Blended services" means a nonduplicative combination of ABI waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care.

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

(11)[~~(10)~~] "Budget allowance" is defined by KRS 205.5605(1).

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

(13)[~~(12)~~] "Consumer" is defined by KRS 205.5605(2).

(14)[~~(13)~~] "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waiver that allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(15)[~~(14)~~] "Covered services and supports" is defined by KRS 205.5605(3).

(16)[~~(15)~~] "Crisis prevention and response plan" means a plan developed by an interdisciplinary team to identify any potential risk to a recipient and to detail a strategy to minimize the risk.

(17)[~~(16)~~] "DCBS" means the Department for Community Based Services.

(18)[~~(17)~~] "Department" means the Department for Medicaid Services or its designee.

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

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period.

(20)[~~(19)~~] "Human rights committee" or "HRC" means a group of individuals established to protect the rights and welfare of an ABI recipient.

(21)[~~(20)~~] "Interdisciplinary team" means a group of individuals that assist in the development and implementation of an ABI[~~ABI's~~] recipient's plan of care consisting of:

(a) The ABI recipient and legal representative if appointed;

(b) A chosen ABI service provider;

(c) A case manager; or

(d) Others as designated by the ABI recipient.

(22)[~~(21)~~] "Level of care certification" means verification, by the department, of ABI program eligibility for:

(a) An individual; and

(b) A specific period of time.

(23)[~~(22)~~] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(24)[~~(23)~~][~~(22)~~] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(25)[~~(24)~~][~~(23)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accor-

dance with 907 KAR 3:130.

(26)[~~(25)~~][~~(24)~~] "Occupational therapist" is defined by KRS 319A.010(3).

(27)[~~(26)~~][~~(25)~~] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(28)[~~(27)~~][~~(26)~~] "Patient liability" means the financial amount, determined by the department, that an individual is required to contribute towards cost of care in order to maintain Medicaid eligibility.

(29)[~~(28)~~] "Personal services agency" is defined by KRS 216.710(8).

(30)[~~(29)~~][~~(27)~~] "Psychologist" is defined by KRS 319.010(8).

(31)[~~(30)~~][~~(28)~~] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(32)[~~(31)~~][~~(29)~~] "Qualified mental health professional" is defined by KRS 202A.011(12).

(33)[~~(32)~~][~~(30)~~] "Representative" is defined by KRS 205.5605(6).

(34)[~~(33)~~][~~(31)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

(35)[~~(34)~~][~~(32)~~] "Support broker" means an individual designated by the department to:

(a) Provide training, technical assistance, and support to a consumer; and

(b) Assist a consumer in any other aspects of CDO.

(36)[~~(35)~~][~~(33)~~] "Support spending plan" means a plan for a consumer that identifies the:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes; and

(g) Budget allowance.

(37)[~~(36)~~][~~(34)~~] "Transition plan" means a plan that is developed by an interdisciplinary team to aid an ABI recipient in exiting from the ABI program into the community.

Section 2. Non-CDO Provider Participation. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a consumer-directed option service, an ABI provider shall:

(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671[~~, Conditions of Medicaid provider participation; withholding overpayments, administrative appeals process, and sanctions~~];

(b) Be certified by the department prior to the initiation of the service;

(c) Be recertified at least annually by the department; [~~and~~]

(d) Have an office within the commonwealth of Kentucky; and

(e) Complete and submit a MAP-4100a to the department.

(2) An ABI provider shall comply with:

(a) 907 KAR 1:672[~~, Provider enrollment, disclosure, and documentation for Medicaid participation~~];

(b) 907 KAR 1:673[~~, Claims processing~~]; and

(c) 902 KAR 20:078[~~, Operations and services; group homes~~].

(3) An ABI provider shall have a governing body that shall be:

(a) a legally-constituted entity within the Commonwealth of Kentucky; and

(b) responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an ABI recipient served by the agency.

(4) An ABI provider shall:

(a) Unless participating in the CDO program, ensure that an ABI waiver service is not provided to an ABI recipient by a staff member of the ABI provider who has one (1) of the following blood relationships to the ABI recipient:

1. Child;

2. Parent;

3. Sibling; or

4. Spouse;

(b) Not enroll an ABI recipient for whom the ABI provider cannot meet the service needs; and

(c) Have and follow written criteria that complies with this administrative regulation for determining the eligibility of an individual for admission to services.

(5) An ABI provider shall comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, 42 U.S.C. 1320d to 1320d-8.

(6) An ABI provider shall meet the following requirements if responsible for the management of an ABI recipient's funds:

(a) Separate accounting shall be maintained for each ABI recipient or for his or her interest in a common trust or special account;

(b) Account balance and records of transactions shall be provided to the ABI recipient or legal representative on a quarterly basis; and

(c) The ABI recipient or legal representative shall be notified when a large balance is accrued that may affect Medicaid eligibility.

(7) An ABI provider shall have a written statement of its mission and values.

(8) An ABI provider shall have written policy and procedures for communication and interaction with a family and legal representative of an ABI recipient which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction with direct care staff;

(c) Require prompt notification of any unusual incident;

(d) Permit visitation with the ABI recipient at a reasonable time and with due regard for the ABI recipient's right of privacy;

(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language and socioeconomic characteristics of the ABI recipient.

(9) An ABI provider shall ensure the rights of an ABI recipient by:

(a) Making available a description of the rights and the means by which the rights may be exercised, including:

1. The right to time, space, and opportunity for personal privacy;

2. The right to retain and use personal possessions; and

3. For supervised residential care[~~a residential~~], personal care, companion or respite provider, the right to communicate, associate and meet privately with a person of the ABI recipient's choice, including:

a. The right to send and receive unopened mail; and

b. The right to private, accessible use of the telephone;

(b) Maintaining a grievance and appeals system; and

(c) Complying with the Americans with Disabilities Act (28 C.F.R. Part 35); and

(d) Prohibiting the use of:

1. Prone or supine restraint;

2. Corporal punishment;

3. Seclusion;

4. Verbal abuse; or

5. Any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility.

(10) An ABI provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service is provided and all the records and reports shall be made available to the:

(a) Department;

(b) ABI recipient's selected case manager;

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

(d) General Accounting Office or its designee;

(e) Office of the Auditor of Public Accounts or its designee;

(f) Office of the Attorney General or its designee; or

(g) Centers for Medicare and Medicaid Services.

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

(12) An ABI provider shall maintain a record for each ABI recipient served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through each error which is initialed and dated; and

(d) Contain no blank lines [~~in~~]between each entry.

(13) A record of each ABI recipient who is served shall:

(a) Be cumulative;

(b) Be readily available;

(c) Contain a legend that identifies any symbol or abbreviation used in making a record entry; and

(d) Contain the following specific information:

1. The ABI recipient's name[~~, Social Security number~~] and Medical Assistance Identification Number (MAID);

2. An assessment summary relevant to the service area;

3. The plan of care, MAP-109;

4. The crisis prevention and response plan that shall include:

a. A list containing emergency contact telephone numbers; and

b. The ABI recipient's history of any allergies with appropriate allergy alerts for severe allergies;

5. The transition plan that shall include:

a. Skills to be obtained from the ABI waiver program;

b. A listing of the on-going formal and informal community services available to be accessed; and

c. A listing of additional resources needed;

6. The training objective for any service which provides skills training to the ABI recipient;

7. The ABI recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

8. Legally-adequate consent for the provision of services or other treatment including a consent for emergency attention which shall be located at each service site;

9. The Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350 updated at recertification; and

10. Current level of care certification;

(e) Be maintained by the provider in a manner to ensure the confidentiality of the ABI recipient's record and other personal information and to allow the ABI recipient or legal representative to determine when to share the information as provided by law;

(f) Be secured against loss, destruction or use by an unauthorized person ensured by the provider; and

(g) Be available to the ABI recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.

(14) An ABI provider shall:

(a)1. Ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider;

2. Maintain, for existing staff, documentation of each staff person's or, if a volunteer performs direct care or a supervisory function, the volunteer's annual TB risk assessment or negative tuberculosis test described in subparagraph 1 of this paragraph;

3. Ensure that an employee or volunteer who tests positive for TB or has history of positive TB skin test shall be assessed annually by a licensed medical professional for signs or symptoms of active disease;

4. Before allowing a staff person or volunteer determined to have signs or symptoms of active disease to work, ensure that follow-up testing is administered by a physician with the test results indicating the person does not have active TB disease; and

5. Maintain annual documentation for an employee or volunteer with a positive TB test to ensure no active disease symptoms are present.[~~staff person or volunteer performing direct care or a supervisory function has tested negatively for tuberculosis within the past twelve (12) months as documented on test results received by the provider within seven (7) days of the date of hire or date the individual began serving as a volunteer; and~~

~~2. Maintain documentation of each staff person's or, if a volunteer performs direct care or a supervisory function, the volunteer's negative tuberculosis test described in subparagraph 1 of this paragraph;~~]

(b) For each potential employee or volunteer expected to perform direct care or a supervisory function, obtain:

1. Prior to the date of hire or date of service as a volunteer, the results of:

a. A criminal record check from the Administrative Office of the Courts or equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service;

b. A nurse aide abuse registry check as described in 906 KAR 1:100; and

c. Annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment; and

2. Within thirty (30) days of the date of hire or date of service as a volunteer, the results of a central registry check as described in 922 KAR 1:470;

(c) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(d) Not permit an employee or volunteer to transport an ABI recipient if the employee or volunteer**:**

1. Does not possess a valid operator's license issued pursuant to KRS 186.41; or

2. Has a conviction of Driving Under the Influence (DUI) during the past year;

(e) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a conviction of **trafficking, manufacturing, or possession of an illegal drug [**~~abuse or sale of illegal drugs~~**]** during the past five (5) years;

(f) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a conviction of abuse, neglect or exploitation;

(g) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry;

(h) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual is listed on the nurse aide abuse registry;

(i) Evaluate and document the performance of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter; and

(j) Conduct and document periodic and regularly-scheduled supervisory visits of all professional and paraprofessional direct-service staff at the service site in order to ensure that high quality, appropriate services are provided to the ABI recipient.

(15) An ABI provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct-contact staff who:

1. Is eighteen (18) years of age or older;

2. Has a high school diploma or GED; and

3.a. Has a minimum of two (2) years experience in providing a service to an individual with a disability; or

b. Has successfully completed a formalized training program such as nursing facility nurse aide training.

(16) An ABI provider shall establish written guidelines that address the health, safety and welfare of an ABI recipient, which shall include:

(a) Ensuring the health, safety and welfare of the ABI recipient;

(b) The prohibition of firearms and ammunition at a provider-service site;

(c) Maintenance of sanitary conditions;

(d) Ensuring each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(e) For a supervised residential care or adult day training [~~residential or structured day~~] provider, ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by the ABI recipient not exceeding 120 degrees Fahrenheit;

(f) Ensuring that the nutritional needs of the ABI recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(g) Ensuring that staff who supervise medication administration[~~administering medication~~]:

1. Unless the employee is a licensed or registered nurse, have specific training provided by a licensed medical professional and documented competency on cause and effect and proper administration and storage of medication which shall be provided by a nurse, pharmacist or medical doctor; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication, dosage, time of administration, and the recipient's name[~~and time~~] if administered to the ABI recipient or self-administered at a program site other than his or her residence; and

d. Be documented on a medication administration form and properly disposed of if discontinued; and

(h) Establish policies[~~policy~~] and procedures for on-going monitoring of medication administration as approved by the department.

(17) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include an evacuation drill:

1. To be conducted and documented at least quarterly; and

2. For a residential setting, scheduled to include a time when an ABI recipient is asleep;

(c) Mandate that:

1. The result of an evacuation drill be evaluated and modified as needed; and

2. Results of the prior year's evacuation drill be maintained on site[~~to be conducted and documented at least quarterly and for a residential setting, scheduled to include a time when an ABI recipient is asleep; and~~

~~(c) Mandate that the result of an evacuation drill be evaluated and modified as needed~~].

(18) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization and policy of the agency;

(b) Require documentation of all training which shall include:

1. The type of training provided;

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(c) Ensure that each employee complete ABI training consistent with the curriculum that has been approved by the department prior to working independently with an ABI recipient which shall include:

1. Required orientation in brain injury;

2. Identifying and reporting abuse, neglect and exploitation;

3. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Coronary pulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

(d) Ensure that each employee completes at least six (6) hours of continuing education in brain injury annually;

(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, 2,000 hours of experience in serving a person with a primary diagnosis of a brain injury including:

1. An occupational therapist or occupational therapy assistant providing occupational therapy;

2. A psychologist or psychologist with autonomous functioning providing psychological services;

3. A speech-language pathologist providing speech therapy; or

4. A board certified behavior analyst; and

(f) Ensure that prior to the date of service as a volunteer, an individual receive training which shall include:

1. Required orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of this subsection;

2. Orientation to the agency;

3. A confidentiality statement; and

4. Individualized instruction on the needs of the ABI recipient to whom the volunteer will provide services.

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

(20) A case management provider shall:

(a) Establish a human rights committee which shall:

1. Include an:

a. Individual with a brain injury or a family member of an individual with a brain injury;

b. Individual not affiliated with the ABI provider; and

c. Individual who has knowledge and experience in human rights issues;

2. Review and approve each plan of care with human rights restrictions at a minimum of every six (6) months; [~~and~~]

3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that [~~include highly restrictive procedures or~~] contain human rights restrictions; and

4. Review the use of a psychotropic medication by an ABI recipient without an Axis I diagnosis; and

(b) Establish a behavior intervention committee which shall:

1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;

2. Be separate from the human rights committee; and

3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and

(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each ABI recipient:

1. Within thirty (30) days of the recipient's admission into the ABI program;

2. Annually thereafter; and

3. Upon discharge from the ABI waiver program.

Section 3. ABI Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the ABI program:

(a) An individual shall:

1. Be at least eighteen (18) years of age;

2. Have acquired a brain injury of the following nature, to the central nervous system:

a. An injury from physical trauma;

b. Damage from anoxia or from a hypoxic episode; or

c. Damage from an allergic condition, toxic substance, or another acute medical incident; and

3. Apply to be placed on the ABI waiting list in accordance with Section 7 of this administrative regulation;

(b) A case manager or support broker, on behalf of an applicant, shall submit a certification packet to the department containing the following[~~be twenty-one (21) to sixty-five (65) years of age with an ABI that involves cognition, behavior, or a physical function which necessitates supervised and rehabilitative services;~~

~~(b) An individual shall be placed on the ABI waiting list in accordance with Section 7 of this administrative regulation;~~

~~(c) n application packet containing the following shall be submitted by a support broker on behalf of the applicant~~]:

1. A copy of the allocation letter;

2. An Assessment form - MAP-351;

3. A statement for the need for ABI waiver[~~long-term care~~] services which shall be signed and dated by a physician on an Acquired Brain Injury Waivers Services form - MAP-10;

4. A Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350;

5. A Plan of Care form - MAP-109; and

6. The ABI Recipient's Admission Discharge DCBS Notification Form - MAP 24C;

(c)[~~(d)~~] An individual shall Receive notification of potential funding allocated for ABI services for the individual in accordance with Section 7 of this administrative regulation;

(d)[~~(e)~~] An individual shall meet the patient status criteria for nursing facility services established in 907 KAR 1:022 including nursing facility services for a brain injury;

(e)[~~(f)~~] An individual shall meet the following conditions:

1. Have a primary diagnosis that indicates an ABI with structural, nondegenerative brain injury;

2. Be medically stable;

3. Meet Medicaid eligibility requirements established in 907 KAR 1:605;

4. Exhibit cognitive, behavioral, motor or sensory damage with an indication for rehabilitation and retraining potential; and

5. Have a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale; and

(f)[~~(g)~~] An individual shall receive notification of approval from the department.

(2) An individual shall not remain in the ABI waiver program for an indefinite period of time.

(3) The basis of an eligibility determination for participation in the ABI waiver program shall be:

(a) The presenting problem;

(b) The plan of care goal;

(c) The expected benefit of the admission;

(d) The expected outcome;

(e) The service required; and

(f) The cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(4) An ABI waiver service shall not be furnished to an individual if the individual is:

(a) An inpatient of a hospital, nursing facility or an intermediate care facility for individuals with mental retardation or a developmental disability; or

(b) Receiving a service in another home and community based waiver program.

(5) The department shall make:

(a) An initial evaluation to determine if an individual meets the nursing facility patient status[~~level of care~~] criteria established in 907 KAR 1:022; and

(b) A determination of whether to admit an individual into the ABI waiver program.

(6) To maintain eligibility as an ABI recipient:

(a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

(b) A reevaluation shall be conducted at least once every twelve (12) months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(7) An ABI case management provider shall notify the local DCBS office, **ABIB [~~BISB~~]**, and the department via an ABI Recipient's Admission Discharge DCBS Notification form - MAP 24C, if the ABI recipient is:

(a) Admitted to the ABI waiver program;

(b) Discharged[~~Terminated~~] from the ABI waiver program;

(c) Temporarily discharged from the ABI waiver program;

(d) **Readmitted from a temporary discharge;**

(e) Admitted to a nursing facility; [~~or~~]

(f)[~~(e)~~] Changing the primary provider; or

(g)[~~(f)~~] Changing case management agency.

(8) The department may exclude an individual from receiving ABI waiver services if the projected cost of ABI waiver services for the individual is reasonably expected to exceed the cost of nursing facility services for the individual[~~an ABI waiver service for whom the aggregate cost of ABI waiver service would reasonably be expected to exceed the cost of a nursing facility service~~].

(9) Involuntary termination and loss of an ABI waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to initiate an ABI waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:

1. A statement signed by the recipient or legal representative;

2. Copies of letters to providers; and

3. Copies of letters from providers;

(b) An ABI recipient or legal representative fails to access the required service as outlined in the plan of care for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers; and

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; and

b. For an individual who resides in a facility, the length of the transition plan and contingent upon continued active participation in the transition plan;

(c) An ABI recipient changes residence outside the Commonwealth of Kentucky; or

(d) An ABI recipient does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(e) An ABI recipient is no longer able to be safely served in the community; [~~or~~]

(f) The ABI recipient has reached maximum rehabilitation potential; or

(g) An ABI recipient is no longer actively participating in services within the approved plan of care as determined by the interdisciplinary team.

(10) Involuntary termination of a service to an ABI recipient by an ABI provider shall require:

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

1. A statement of the intended action;

2. The basis for the intended action;

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

4. The ABI recipient's right to appeal the intended action through the provider's appeal or grievance process; and

(b) The case manager in conjunction with the provider to:

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

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

3. Arrange transportation for a requested visit to an ABI provider site;

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

5. Ensure the health, safety and welfare of the ABI recipient until an appropriate placement is secured; **[**~~and~~**]**

6. **Continue to provide supports until alternative services or another placement is secured; and**

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

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

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

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

Section 4. Covered Services. (1) An ABI waiver service shall:

(a) Be prior-authorized by the department; and

(b) Be provided pursuant to the plan of care.

(2) The following services shall be provided to an ABI recipient by an ABI waiver provider:

(a) Case management services, which shall:

1. Include initiation, coordination, implementation, and monitoring of the assessment or reassessment, evaluation, intake, and eligibility process;

2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and interdisciplinary team meetings;

3. Assist an ABI recipient and the interdisciplinary team to develop an individualized plan of care and update it as necessary based on changes in the recipient's medical condition and supports;

4. Include monitoring of the delivery of services and the effectiveness of the plan of care, which shall:

a. Be initially developed with the ABI recipient and legal representative if appointed prior to the level of care determination;

b. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and

c. Include the ABI Plan of Care form - MAP-109 being sent to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;

5. Include a transition plan that shall be developed within the first thirty (30) days of service, updated as changes or recertification occurs, updated thirty (30) days prior to discharge, and [~~updated as changes or recertification occurs, and~~] shall include:

a. The skills or service obtained from the ABI waiver program upon transition into the community; and

b. A listing of the community supports available upon the transition;

6. Assist an ABI recipient in obtaining a needed service outside those available by the ABI waiver;

7. Be provided by a case manager who:

a.(i) Is a registered nurse;

(ii) Is a licensed practical nurse;

(iii) Is an individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in psychology, sociology, social work, rehabilitation counseling, or occupational therapy;

(iv) Is an independent case manager; or

(v) Is employed by a free-standing case management agency;

b. Has completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services;

c. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area;

d. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;

e. Shall provide a distribution of the crisis prevention and response plan, transition plan, plan of care, and other documents within the first thirty (30) days of the service to the chosen ABI service provider and as information is updated;

f. Shall provide twenty-four (24) hour telephone access to an ABI recipient and chosen ABI provider;

g. Shall work in conjunction with an ABI provider selected by an ABI recipient to develop a crisis prevention and response plan which shall be:

(i) Individual-specific; and

(ii) Updated as a change occurs and at each recertification;

h. Shall assist an ABI recipient in planning resource use and assuring protection of resources;

i.(i) Shall conduct two (2) face-to-face meetings with an ABI recipient within a calendar month occurring at a covered service site no more than fourteen (14) days apart, with one (1) visit quarterly at the ABI recipient's residence; and

(ii) For an ABI recipient receiving supervised residential care, shall conduct at least one (1) of the two (2) monthly visits at the ABI recipient's supervised residential care provider site;

j. [~~Shall visit an ABI recipient who resides outside of his or her own or family's home on a monthly basis;~~

~~k.~~] Shall ensure twenty-four (24) hour availability of services; and

k.[~~l.~~] Shall ensure that the ABI recipient's health, welfare, and safety needs are met; and

8. Be documented by a detailed staff note which shall include:

a. The ABI recipient's health, safety and welfare;

b. Progress toward outcomes identified in the approved plan of care;

c. The date of the service;

d. Beginning and ending time; [~~and~~]

e. The signature[~~, date of signature~~] and title of the individual providing the service; and

f. A quarterly summary which shall include:

(i) Documentation of monthly contact with each chosen ABI provider; and

(ii) Evidence of monitoring of the delivery of services approved in the recipient's plan of care and of the effectiveness of the plan of care;

(b) Behavior programming which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Include a functional analysis of the ABI recipient's behavior which shall include:

a. An evaluation of the impact of an ABI on cognition and behavior;

b. An analysis of potential communicative intent of the behavior;

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

3. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Not be implemented by the behavior specialist who wrote the plan;

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

f. Reflect the use of positive approaches; and

g. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;

5. Include the monitoring of an ABI recipient's progress which shall be accomplished through:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. Reports involved in implementing the behavioral service plan; and

c. A monthly summary which assesses the participant's status related to the plan of care;

6. Be provided by a behavior specialist who shall:

a.(i) Be a psychologist;

(ii) Be a psychologist with autonomous functioning;

(iii) Be a licensed psychological associate;

(iv) Be a psychiatrist;

(v) Be a licensed clinical social worker;

(vi) Be a clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing;

(vii) Be an advanced **practice** registered nurse **[**~~practitioner (ARNP)~~**]**;

(viii) Be a board certified behavior analyst; or

(ix) Be a licensed professional clinical counselor; and

b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and

7. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature[~~, date~~] and title of the behavioral specialist;

[~~and~~

~~d. A summary of data analysis and progress of the individual toward meeting goals of the services;~~]

(c) Companion services which shall:

1. Include a nonmedical service, supervision or socialization as indicated in the recipient's plan of care;

2. Include assisting with but not performing meal preparation, laundry and shopping;

3. Include light housekeeping tasks which are incidental to the care and supervision of an ABI waiver service recipient;

4. Include services provided according to the approved plan of care which are therapeutic and not diversional in nature;

5. Include accompanying and assisting an ABI recipient while utilizing transportation services;

6. Include documentation by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

7. Not be provided to an ABI recipient who receives supervised residential care[~~community residential services~~]; and

8. Be provided by:

a. A home health agency licensed and operating in accordance with 902 KAR 20:081;

b. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department;

c. [~~A group home licensed and operating in accordance with 902 KAR 20:078;~~

~~d.~~] A community habilitation program certified by the department; or

d. A supervised residential care provider;

(d) Supervised residential care level I, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091; or

b. An ABI provider;

2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:

a. Consider applications for residential care in the order in which the applications are received;

b. Base residential care decisions on the following factors:

(i) Whether the applicant resides with a caregiver or not;

(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or

(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;

c. Be comprised of three (3) Cabinet for Health and Family Services employees:

(i) With professional or personal experience with brain injury or other cognitive disabilities; and

(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications for a monthly committee meeting which were received no later than **three (3) business days [**~~the close of business the day~~**]** before the committee convenes;

3. Shall not have more than three (3) ABI recipients simultaneously in a residence rented or owned by the ABI provider;

4. Shall provide twenty-four (24) hours of supervision daily unless the provider implements, pursuant to subparagraph 5 of this paragraph, an individualized plan allowing for up to five (5) unsupervised hours per day;

5. May include the provision of up to five (5) unsupervised hours per day per recipient if the provider develops an individualized plan for the recipient to promote increased independence which shall:

a. Contain provisions necessary to ensure the recipient's health, safety, and welfare;

b. Be approved by the recipient's treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the recipient's status;

6. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

7. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;

8. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

9. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care;

10. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

11. Shall be documented by a detailed staff note which shall document:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time of the service; and

d. The signature and title of the individual providing the service;

12. Shall not include the cost of room and board;

13. Shall be provided to an ABI recipient who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

14. May utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in an emergency;

15. Shall not utilize a motor home;

16. Shall provide a sleeping room which ensures that an ABI recipient:

a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;

b. Does not share a room with an individual who presents a potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and

17. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;

(e) Supervised residential care level II, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091; or

b. An ABI provider;

2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:

a. Consider applications for residential care in the order in which the applications are received;

b. Base residential care decisions on the following factors:

(i) Whether the applicant resides with a caregiver or not;

(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or

(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;

c. Be comprised of three (3) Cabinet for Health and Family Services employees:

(i) With professional or personal experience with brain injury or other cognitive disabilities; and

(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications for a monthly committee meeting which were received no later than **three (3) business days [**~~the close of business the day~~**]** before the committee convenes;

3. Shall not have more than three (3) ABI recipients simultaneously in a residence rented or owned by the ABI provider;

4. Shall provide twelve (12) to eighteen (18) hours of daily supervision, the amount of which shall:

a. Be based on the recipient's needs;

b. Be approved by the recipient's treatment team; and

c. Be documented in the recipient's plan of care which shall also contain periodic reviews and updates based on changes, if any, in the recipient's status;

5. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning;

h. Grocery shopping;

i. Meal preparation;

j. Laundry;

k. Budgeting and financial matters;

l. Home care and cleaning;

m. Leisure skill instruction; or

n. Self-medication instruction;

6. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;

7. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

8. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care;

9. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

10. Shall include provision of twenty-four (24) hour on-call support;

11. Shall be documented by a detailed staff note which shall document:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time of the service; and

d. The signature and title of the individual providing the service;

12. Shall not include the cost of room and board;

13. Shall be provided to an ABI recipient who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

14. May utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in an emergency;

15. Shall not utilize a motor home;

16. Shall provide a sleeping room which ensures that an ABI recipient:

a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;

b. Does not share a room with an individual who presents a potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and

17. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;

(f) Supervised residential care level III, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091; or

b. An ABI provider;

2. Shall not be provided to an ABI recipient unless the recipient has been authorized to receive residential care by the department's residential review committee which shall:

a. Consider applications for residential care in the order in which the applications are received;

b. Base residential care decisions on the following factors:

(i) Whether the applicant resides with a caregiver or not;

(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or

(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;

c. Be comprised of three (3) Cabinet for Health and Family Services employees:

(i) With professional or personal experience with brain injury or other cognitive disabilities; and

(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications for a monthly committee meeting which were received no later than **three (3) business days [**~~the close of business the day~~**]** before the committee convenes;

3. May be provided in a single family home, duplex or apartment building to an ABI recipient who lives alone or with an unrelated roommate;

4. Shall not be provided to more than two (2) ABI recipients simultaneously in one (1) apartment or home;

5. Shall not be provided in more than two (2) apartments in one (1) building;

6. Shall, if provided in an apartment building, have staff:

a. Available twenty-four (24) hours per day and seven (7) days per week; and

b. Who do not reside in a dwelling occupied by an ABI recipient;

7. Shall provide less than twelve (12) hours of supervision or support in the residence based on an individualized plan developed by the provider to promote increased independence which shall:

a. Contain provisions necessary to ensure the recipient's health, safety, and welfare;

b. Be approved by the recipient's treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the recipient's status;

8. Shall include assistance and training with daily living skills including:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;
e. Toileting;
f. Bathing;
g. Meal planning;
h. Grocery shopping;
i. Meal preparation;
j. Laundry;
k. Budgeting and financial matters;
l. Home care and cleaning;
m. Leisure skill instruction; or
n. Self-medication instruction;

9. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's plan of care;

10. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

11. Shall include accompanying or assisting an ABI recipient while the recipient utilizes transportation services as specified in the recipient's plan of care;

12. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

13. Shall be documented by a detailed staff note which shall document:

a. Progress toward goals and objectives identified in the approved plan of care;
b. The date of the service;
c. The beginning and ending time of the service;
d. The signature and title of the individual providing the service; and
e. Evidence of at least one (1) daily face-to-face contact with the ABI recipient;

14. Shall not include the cost of room and board;

15. Shall be provided to an ABI recipient who:

a. Does not reside with a caregiver;
b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or
c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

16. May utilize a modular home only if the:

a. Wheels are removed;
b. Home is anchored to a permanent foundation; and
c. Windows are of adequate size for an adult to use as an exit in an emergency;

17. Shall not utilize a motor home;

18. Shall provide a sleeping room which ensures that an ABI recipient:

a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;
b. Does not share a room with an individual who presents a potential threat; and
c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the ABI recipient's health and comfort; and

19. Shall provide service and training to obtain the outcomes for the ABI recipient as identified in the approved plan of care;

(g)[~~e. A staffed residence certified by the department;~~

~~(d) Community residential services which shall:~~

~~1. Include twenty-four (24) hour supervision in:~~

~~a. A community mental health center licensed and operating in accordance with 902 KAR 20:091;~~

~~b. A staffed residence that is certified by the department which shall not have greater than three (3) ABI recipients in a home rented or owned by the ABI provider; or~~

~~c. A group home which shall be licensed and operating in accordance with 902 KAR 20:078;~~

~~2. Not include the cost of room and board;~~

~~3. Be available to an ABI recipient who:~~

~~a. Does not reside with a caregiver;~~

~~b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or~~

~~c. Demonstrates behavior that may result in potential legal problems if not ameliorated;~~

~~4. Utilize a modular home only if the:~~

~~a. Wheels are removed;~~

~~b. Home is anchored to a permanent foundation; and~~

~~c. Windows are of adequate size for an adult to use as an exit in an emergency;~~

~~5. Not utilize a motor home;~~

~~6. Provide a sleeping room which ensures that an ABI recipient:~~

~~a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;~~

~~b. Does not share a room with an individual who presents a potential threat; and~~

~~c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the ABI recipient's health and comfort;~~

~~7. Provide assistance with daily living skills which shall include:~~

~~a. Ambulating;~~
~~b. Dressing;~~
~~c. Grooming;~~
~~d. Eating;~~
~~e. Toileting;~~
~~f. Bathing;~~
~~g. Meal planning, grocery shopping and preparation;~~
~~h. Laundry;~~
~~i. Budgeting and financial matters;~~
~~j. Home care and cleaning;~~
~~k. Social skills training;~~
~~l. Reduction or elimination of a maladaptive behavior;~~
~~m. Instruction in leisure skills; and~~
~~n. Instruction in self medication;~~

~~8. Provide service and training to obtain the outcomes of the ABI recipient as identified in the approved plan of care;~~

~~9. Provide or arrange for transportation to services, activities, or medical appointments as needed;~~

~~10. Include participation in medical appointments and follow-up care as directed by the medical staff; and~~

~~11. Be documented by a detailed staff note which shall include:~~

~~a. Progress toward goal and objectives identified in the approved plan of care;~~

~~b. The date of the service;~~

~~c. Beginning and ending time; and~~

~~d. The signature, date and title of the individual providing the service;~~]

~~(e)~~] Counseling services which:

1. Shall be designed to help an ABI waiver service recipient resolve personal issues or interpersonal problems resulting from his or her ABI;

2. Shall assist a family member in implementing an ABI waiver service recipient's approved plan of care;

3. In a severe case, shall be provided as an adjunct to behavioral programming;

4. Shall include substance abuse or chemical dependency treatment;

5. Shall include building and maintaining healthy relationships;

6. Shall develop social skills or the skills to cope with and adjust to the brain injury;

7. Shall increase knowledge and awareness of the effects of an ABI;

8. May include a group therapy service if the service is:

a. Provided to a minimum of two (2) and a maximum of eight (8) ABI recipients[~~a maximum of twelve (12) ABI recipients no more than two (2) times a week not to exceed ninety (90) minutes~~]; and

b. Included in the recipient's approved plan of care for:

(i) Substance abuse or chemical dependency treatment;
(ii) Building and maintaining healthy relationships;
(iii) Developing social skills;
(iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving

strategies, and the management of impulsivity; and

(v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the ABI recipient's functioning and social interactions;

9. Shall be provided by:

a. A psychiatrist;

b. A psychologist;

c. A psychologist with autonomous functioning;

d. A licensed psychological associate;

e. A licensed clinical social worker;

f. A clinical nurse specialist with a master's degree in psychiatric nursing;

g. An advanced **practice** registered nurse **[**~~practitioner (ARNP)~~**]**; or

h. A certified alcohol and drug counselor;

i. A licensed marriage and family therapist; or

j. A licensed professional clinical counselor; and

10. Shall be documented by a detailed staff note which shall include:

a. Progress toward the goals and objectives established in the plan of care;

b. The date of the service;

c. The beginning and ending time; and

d. The signature[~~, date of signature~~] and title of the individual providing the service;

(h)[~~(f)~~] Occupational therapy which shall be:

1. A physician-ordered evaluation of an ABI recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide an ABI recipient in the use of therapeutic, creative, and self-care activities to assist the ABI recipient in obtaining the highest possible level of functioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by an occupational therapist or an occupational therapy assistant if supervised by an occupation therapist in accordance with 201 KAR 28:130; and

5. Documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

(i)[~~(g)~~] Personal care services which shall:

1. Include the retraining of an ABI waiver service recipient in the performance of an activity of daily living by using repetitive, consistent and ongoing instruction and guidance;

2. Be provided by:

a. An adult day health care center licensed and operating in accordance with 902 KAR 20:066; or

b. A home health agency licensed and operating in accordance with 902 KAR 20:081;

c. A personal services agency; or

d. An ABI provider;

3. Include the following activities of daily living:

a. Eating, bathing, dressing or personal hygiene;

b. Meal preparation; and

c. Housekeeping chores including bed-making, dusting and vacuuming;

4. Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service; and

5. Not be provided to an ABI recipient who receives supervised residential care[~~community residential services;~~]

(j)[~~(h)~~] A respite service which shall:

1. Be provided only to an ABI recipient unable to administer self-care;

2. Be provided by a:

a. Nursing facility;

b. Community mental health center;

c. Home health agency;

d. Supervised residential care provider; or

e. [~~Group home agency;~~

~~e. Staffed residence agency; or~~

~~f.~~] Community habilitation program;

3. Be provided on a short-term basis due to absence or need for relief of an individual providing care to an ABI recipient;

4. Be limited to 336 hours in a twelve (12) month [~~168 hours in a six (6) month~~]period unless an individual's normal caregiver is unable to provide care due to a:

a. Death in the family;

b. Serious illness; or

c. Hospitalization;

5. Not be provided to an ABI recipient who receives supervised residential care[~~community residential services~~];

6. Not include the cost of room and board if provided in a nursing facility; and

7. Be documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c.[~~b.~~] The beginning and ending time; and

d.[~~c.~~] The signature[~~, date of signature~~] and title of the individual providing the service;

(k)[~~(j)~~] Speech, hearing and language services which shall be:

1. A physician-ordered evaluation of an ABI recipient with a speech, hearing or language disorder;

2. A physician-ordered habilitative service in a specified amount and duration to assist an ABI recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by a speech language pathologist; and

5. Documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

(l) Adult day training[~~(j) Structured day program~~] services which shall:

1. Be provided by:

a. An adult day health care center which is certified by the department and licensed and operating in accordance with 902 KAR 20:066;

b. An outpatient rehabilitation facility which is certified by the department and licensed and operating in accordance with 902 KAR 20:190;

c. A community mental health center licensed and operating in accordance with 902 KAR 20:091;

d. A community habilitation program;

e. A sheltered employment program; or

f. A therapeutic rehabilitation program;

2. [~~Be to~~]Rehabilitate, retrain and reintegrate an individual into the community;

3. Not exceed a staffing ratio of five (5) ABI recipients per one (1) staff person, unless an ABI recipient requires individualized special service;

4. Include the following services:

a. Social skills training related to problematic behaviors identified in the recipient's plan of care;

b. Sensory or motor development;

c. Reduction or elimination of a maladaptive behavior;

d. Prevocational; or

e. Teaching concepts and skills to promote independence including:

(i) Following instructions;

(ii) Attendance and punctuality;

(iii) Task completion;

(iv) Budgeting and money management;

(v) Problem solving; or

(vi) Safety;

5. Be provided in a nonresidential setting;

6. Be developed in accordance with an ABI waiver service recipient's overall approved plan of care;

7. Reflect the recommendations of an ABI waiver service recipient's interdisciplinary team;

8. Be appropriate:

a. Given an ABI waiver service recipient's age, level of cognitive and behavioral function and interest;

b. Given an ABI waiver service recipient's ability prior to and since his or her injury; and

c. According to the approved plan of care and be therapeutic in nature and not diversional;

9. Be coordinated with occupational, speech, or other rehabilitation therapy included in an ABI waiver service recipient's plan of care;

10. Provide an ABI waiver service recipient with an organized framework within which to function in his or her daily activities;

11. Entail frequent assessments of an ABI waiver service recipient's progress and be appropriately revised as necessary; and

12. Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved plan of care;

b. The date of the service;

c. The beginning and ending time; [~~and~~]

d. The signature[~~, date~~] and title of the individual providing the service; and

e. A monthly summary that assesses the participant's status related to the approved plan of care;

(m)[~~(k)~~] Supported employment which shall be:

1. Intensive, ongoing services for an ABI recipient to maintain paid employment in an environment in which an individual without a disability is employed;

2. Provided by a:

a. Supported employment provider;

b. Sheltered employment provider; or

c. Structured day program provider;

3. Provided one-on-one;

4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the ABI recipient's file;

5. Limited to forty (40) hours per week alone or in combination with structured day services;

6. An activity needed to sustain paid work by an ABI recipient receiving waiver services including supervision and training;

7. Exclusive of work performed directly for the supported employment provider; and

8. Documented by a time and attendance record which shall include:

a. Progress towards the goals and objectives identified in the plan of care;

b. The date of service;

c. The beginning and ending time; and

d. The signature[~~, date~~] and title of the individual providing the service;

(n)[~~(l)~~] Specialized medical equipment and supplies which shall:

1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;

2. Enable an ABI recipient to increase his or her ability to perform daily living activities or to perceive, control or communicate with the environment;

3. Be ordered by a physician and submitted on a Request for Equipment form - MAP-95 and include three (3) estimates for vision and hearing;

4. Include equipment necessary to the proper functioning of specialized items;

5. Not be available through the department's durable medical equipment, vision or hearing programs;

6. Not be necessary for life support;

7. Meet applicable standards of manufacture, design and installation; and

8. Exclude those items which are not of direct medical or remedial benefit to an ABI recipient; [~~or~~]

(o)[~~(m)~~] Environmental modifications which shall:

1. Be provided in accordance with applicable state and local building codes;

2. Be provided to an ABI recipient if:

a. Ordered by a physician;

b. Prior-authorized by the department[~~BISB~~];

c. Submitted on a Request for Equipment form - MAP-95 by a case manager or support broker;

d. Specified in an ABI recipient's approved plan of care;

e. Necessary to enable an ABI recipient to function with greater independence within his or her home; and

f. Without the modification, the ABI recipient would require institutionalization;

3. Not include a vehicle modification[~~or an electronic monitoring system~~];

4. Be limited to no more than $2,000 for an ABI recipient in a twelve (12) month period; and

5. If entailing:

a. Electrical work, be provided by a licensed electrician; or

b. Plumbing work, be provided by a licensed plumber;

(p) An assessment which shall:

1. Be a comprehensive assessment which shall identify:

a. An ABI waiver recipient's needs; and

b. Services that an ABI recipient's family cannot manage or arrange for the recipient;

2. Evaluate an ABI waiver recipient's physical health, mental health, social supports, and environment;

3. Be requested by:

a. An individual requesting ABI waiver services;

b. A family member of the individual requesting ABI services; or

c. A legal representative of the individual requesting ABI services;

4. Be conducted:

a. By an ABI case manager or support broker; and

b. Within seven (7) calendar days of receipt of the request for an assessment;

5. Include at least one (1) face-to-face contact between the assessor and the ABI waiver recipient:

a. And, if appropriate, the recipient's family; and

b. In the ABI waiver recipient's home;

6. Not be reimbursable if the individual no longer meets ABI program eligibility requirements; or

(q) A reassessment:

1. Which shall be performed at least once every twelve (12) months;

2. Which shall be conducted:

a. Using the same procedures as for an assessment; and

b. By an ABI case manager or support broker;

3. The results of which shall be submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;

4. Which shall not be reimbursable if the individual no longer meets ABI program eligibility requirements; and

5. Which shall not be retroactive.

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

(1) A stroke treatable in a nursing facility providing routine rehabilitation services;

(2) A spinal cord injury for which there is no known or obvious injury to the intracranial central nervous system;

(3) Progressive dementia or another condition related to mental impairment that is of a chronic degenerative nature, including senile dementia, organic brain disorder, Alzheimer's Disease, alcoholism or another addiction;

(4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;

(5) A birth defect;

(6) Mental retardation without an etiology to an acquired brain injury;

(7) A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a community; or

(8) Determination that the recipient has met his or her maximum rehabilitation potential.

Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents as follows:

(a) A Class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency;

(b) A Class II incident which shall:

1.a. Be serious in nature; or

b. Include a medication error;[~~or~~

~~c. Involve the use of a physical or chemical restraint;~~]

2. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the case manager or support broker; and

3. Be reported to the following by the provider agency:

a. The case manager or support broker within twenty-four (24) hours of discovery;

b. The guardian within twenty-four (24) hours of discovery; and

c. BISB within twenty-four (24) hours of discovery followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and

(c) A Class III incident which shall:

1.a. Be grave in nature;

b. Involve suspected abuse, neglect or exploitation;

c. Involve a medication error which requires a medical intervention or hospitalization;

d. Be an admission to an acute or psychiatric hospital;

e. Involve the use of a chemical or physical restraint; or

f.[~~or~~

~~d.~~] Be a death;

2. Be Immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;

c. The guardian within eight (8) hours of discovery; and

d. BISB, within eight (8) hours of discovery, followed by a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday, notification to BISB shall occur on the following business day.

(3) The following documentation with a complete written report shall be submitted for a death:

(a) A current plan of care;

(b) A current list of prescribed medications including PRN medications;

(c) A current crisis plan;

(d) Medication Administration Review (MAR) forms for the current and previous month;

(e) Staff notes from the current and previous month including details of physician and emergency room visits;

(f) Any additional information requested by the department;

(g) A coroner's report; and

(h) If performed, an autopsy report.

Section 7. ABI Waiting List. (1) An individual of age eighteen (18) years or older[~~between the age of twenty-one (21) to sixty-five (65) years of age~~]applying for an ABI waiver service shall be placed on a statewide waiting list which shall be maintained by the department.

(2) In order to be placed on the ABI waiting list, an individual shall submit to the department a completed Acquired Brain Injury Waiver Services Program Application form - MAP-26, and an Acquired Brain Injury Waiver Services form - MAP-10.

(3) The order of placement on the ABI waiting list shall be determined by chronological date of receipt of the Acquired Brain Injury Waiver Services form - MAP-10 and by category of need.

(4) The ABI waiting list categories of need shall be emergency or nonemergency.

(5) To be placed in the emergency category of need, an individual shall be determined by the emergency review committee to meet the emergency category criteria established in subsection (8) of this section.

(6) The emergency review committee shall:

(a) Be comprised of three (3) individuals from the department:

1. Who shall each have professional or personal experience with brain injury or cognitive disabilities; and

2. Two (2) of whom shall not be supervised by the branch manager of the department's acquired brain injury branch;

(b) Meet during the fourth (4th) week of each month to review and consider applications for the acquired brain injury waiver program to determine if applicants meet the emergency category of need criteria established in subsection (8) of this subsection;

(7) A completed Acquired Brain Injury Waiver Services Program Application form - MAP-26 and an Acquired Brain Injury Waiver Services form - MAP-10 for an ABI waiting list applicant shall be submitted to the department no later than three (3) business days prior to fourth (4th) week of each month in order to be considered by the emergency review committee during that month's emergency review committee meeting.

(8) An applicant shall meet emergency category of need criteria if the applicant is currently demonstrating behavior related to his or her acquired brain injury:

(a) That places the individual, caregiver, or others at risk of significant harm; or

(b) Which has resulted in the applicant being arrested.

(9) An applicant who does not meet the emergency category of need criteria established in subsection (8) of this subsection shall be considered to be in the nonemergency category of need.

(10)[~~of the individual as follows:~~

~~(a) Emergency. An immediate service is indicated as determined by:~~

~~1. The individual currently is demonstrating behavior related to his or her acquired brain injury that places the recipient or caregiver or others at risk of significant harm; or~~

~~2. The individual is demonstrating behavior related to his or her acquired brain injury which has resulted in his or her arrest; or~~

~~(b) Nonemergency.~~

~~(4)~~] In determining chronological status of an applicant, the original date of receipt of the Acquired Brain Injury Waiver Services Program Application form - MAP-26 and the Acquired Brain Injury Waiver Services form - MAP-10 shall be maintained and not change if an individual is moved from one (1) category of need to another.

(11)[~~(5)~~] A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to a recipient or caregiver.

(12)[~~(6)~~] Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(13)[~~(7)~~] If multiple applications are received on the same date, a lottery shall be held to determine placement on the waiting list within each category of need.

(14)[~~(8)~~] A written notification of placement on the waiting list shall be mailed to the individual or his or her legal representative and case management provider if identified.

(15)[~~(9)~~] Maintenance of the ABI waiting list shall occur as follows:

(a) The department shall, at a minimum, annually update the waiting list during the birth month of an individual;

(b) If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual and his or her legal representative and also the ABI case manager; and

(c) The requested data shall be received by the department within thirty (30) days from the date on the written notice cited in subsection (8) of this section.

(16)[~~(10)~~] Reassignment of an applicant's category of need shall be completed based on the updated information and valida-

tion process.

(17)[(~~11~~] An individual or legal representative may submit a request for consideration of movement from one category of need to another at any time that an individual's status changes.

(18)[(~~12~~] An individual shall be removed from the ABI waiting list if:

(a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;

(b) The individual is deceased;

(c) The individual or individual's legal representative refuses the offer of ABI placement for services and does not request to be maintained on the waiting list; or

(d) An ABI placement for services offer is refused by the individual or legal representative and he or she does not, without good cause, complete the Acquired Brain Injury Waiver Services Program Application form - MAP-26 application within sixty (60) days of the placement allocation date.

1. The individual or individual's legal representative shall have the burden of providing documentation of good cause including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty (60) day extension in writing.

(19)[(~~13~~] If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual or individual's legal representative and the ABI case manager.

(20)[(~~14~~)] The removal of an individual from the ABI waiting list shall not prevent the submittal of a new application at a later date.

(21)[(~~15~~)] Potential funding allocated for services for an individual shall be based upon:

(a) The individual's category of need; and

(b) The individual's chronological date of placement on the waiting list.

Section 8. Consumer Directed Option. (1) Covered services and supports provided to an ABI recipient participating in CDO shall include:

(a) Home and community support services;

(b) Community day support services;

(c) Goods or services; or

(d) Financial management.

(2) A home and community support service [~~which~~] shall:

(a) Be available only under the consumer directed option;

(b) Be provided in the consumer's home or in the community;

(c) Be based upon therapeutic goals;

(d)[~~and~~] Not be diversional in nature;

(e)[(~~d~~)] Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO ABI services; and

(f)1.[(~~e~~)~~1.~~] Be respite for the primary caregiver; or

2. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Meal planning;

j. Meal preparation;

k. Grocery shopping; or

l. Participation in community activities.

(3) A community day support service shall:

(a) Be available only under the consumer-directed option;

(b) Be provided in a community setting;

(c) Be based upon therapeutic goals;

(d) Not be diversional in nature;

(e) Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for:

1. Work;

2. Community activities;

3. Socialization;

4. Leisure; or

5. Retirement activities; and

(f) Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services.

(4) Goods or services shall:

(a) Be individualized;

(b) Be utilized to:

1. Reduce the need for personal care; or

2. Enhance independence within the consumer's home or community;

(c) Not include experimental goods or services; and

(d) Not include chemical or physical restraints.

(5)[(~~2~~)] To be covered, a CDO service shall be specified in a consumer's plan of care.

(6)[(~~3~~)] Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-CDO ABI setting.

(7)[(~~4~~)] A consumer, including a married consumer, shall choose providers and the choice of CDO provider shall be documented in his or her plan of care.

(8)[(~~5~~)] A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:

(a) Be twenty-one (21) years of age or older;

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP-2000 form.

(9)[(~~6~~)] A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(10)[(~~7~~)] The department shall immediately terminate a consumer from CDO services if:

(a) Imminent danger to the consumer's health, safety, or welfare exists;

(b) The recipient's plan of care indicates he or she requires more hours of service than the program can provide, thus jeopardizing the recipient's safety or welfare due to being left alone without a caregiver present; or

(c) The recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff.

(11)[~~.~~

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

(12)[(~~9~~)] Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30), but no more than ninety (90), days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;

(d) Complete and submit to the department a MAP-2000 form terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional ABI services.

(13)[(~~10~~)] Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(14)[(~~11~~)] A CDO provider:

(a) Shall be selected by the consumer;

(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social

Security number or possess a valid work permit if not a U.S. citizen;

(e) Shall be able to communicate effectively with the consumer, consumer representative, or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the consumer;

(h) Shall submit to a criminal background check conducted by the Administrative Office of the Courts if the individual is a Kentucky resident or equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry:

1. A consumer may employ a provider prior to a central registry check result being obtained for up to thirty (30) days; and

2. If a consumer does not obtain a central registry check result within thirty (30) days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165 (1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) Shall be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(15)[~~(12~~] A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(16)(a)[~~(13)(a)~~] The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of ABI recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services; [~~and~~]

3. Protection of the consumer's health, safety, and welfare; and

4. A significant change has occurred in the recipient's:

a. Physical condition resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement resulting in the recipient's relocation.

(f) A consumer's budget shall not exceed the average per capita cost of services provided to individuals with a brain injury in a nursing facility.

(17)[~~(14)~~] Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(18)[~~(15)~~] A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer by phone or in person:

1. Twenty-four (24) hours per day, seven (7) days per week; and

2. To assist the consumer in obtaining community resources as needed;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(19)[~~(17)~~] For a CDO participant, a support broker may conduct an assessment or reassessment.

(20) Financial management shall:

(a) Include managing, directing, or dispersing a consumer's funds identified in the consumer's approved CDO budget;

(b) Include payroll processing associated with the individual hired by a consumer or the consumer's representative;

(c) Include:

1. Withholding local, state, and federal taxes; and

2. Making payments to appropriate tax authorities on behalf of a consumer;

(d) Be performed by an entity:

1. That is enrolled as a Medicaid provider in accordance with 907 KAR 1:672;

2. That is currently compliant with 907 KAR 1:671;

3. Which has at least two (2) years of experience working with individuals with an acquired brain injury; and

(e) Include preparation of fiscal accounting and expenditure reports for:

1. A consumer or consumer's representative; and

2. The department.

Section 9. Electronic Signature Usage. (1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) An ABI provider which chooses to use electronic signatures shall:

(a) Develop and implement a written security policy which shall:

1. Be adhered to by each of the provider's employees, officers, agents, and contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form which shall:

1. Be completed and executed by each individual using an electronic signature;

2.Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature immediately upon request.

Section 10.[~~9.~~] Appeal Rights. (1) An appeal of a department decision regarding a recipient **or applicant**[~~Medicaid beneficiary~~] based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be

in accordance with 907 KAR 1:671.

Section 11.[~~10.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-109 Prior Authorization for Waiver Services", July 2008[~~March 2007~~] edition;

(b) "MAP 24C, SCL or ABI Admission Discharge Department for Community Based Services (DCBS) Notification", **August 2010[**~~July 2008~~**]** [~~April 2007~~] edition;

(c) "MAP-26, Acquired Brain Injury (ABI) Waiver Services Program Application", **August 2010[**~~July 2008~~**]** [~~May 2003~~] edition;

(d) "MAP-95, Request for Equipment Form", May 2010[~~June 2007~~] edition;

(e) "MAP-10 Waiver Services", **August 2010[**~~July 2008~~**]** [~~January 2007~~] edition;

(f) "Incident Report", July 2008[~~April 2007~~] edition;

(g) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)", July 2008[~~March 2007~~] edition;

(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", July 2008[~~January 2000~~] edition;

(i) "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006 edition[~~"Rancho Los Amigos Level of Cognitive Function Scale", November 1974 edition~~];

(j) "MAP-351, Medicaid Waiver Assessment", July 2008[~~March 2007~~] edition;

(k) "Mayo-Portland Adaptability Inventory-4", March 2003 edition; [~~and~~]

(l) "Person Centered Planning: Guiding Principles", March 2005 edition; and

(m) "MAP-4100a", **August 2010 [**~~April 2009~~**]** edition.

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

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 14, 2010 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diane Pratt (502) 564-5198 or Dana McKenna

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(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: Amendments include establishing a residential care model tailored to recipient's needs which will be reimbursed accordingly. The new residential care model is comprised of three levels of care - supervised residential care levels I, II and III. Additional amendments include: incorporating by reference a form (MAP-4100a not previously incorporated) to be used by entities applying to become ABI waiver service providers; clarifying that the providers are prohibited from imposing the following on ABI service recipients: prone or supine restraint, corporal punishment, seclusion, verbal abuse or any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility; inserting an annual criminal record check requirement for staff 25% – the department already requires this for the supports for community living (SCL) program; establishing that the human rights committee shall review the use of a psychotropic medication by an ABI recipient without an Axis I diagnosis; lowering the ABI waiver program eligibility age to 18 rather than 21 years and remove the 65 age limit; utilizing the admission/discharge form (MAP-24C) for case management agency changes; involuntarily terminating an individual from ABI waiver service program participation if the individual is no longer actively participating in services within their approved plan of care; adding a case management quarterly summary requirement - the department already requires this for the SCL program; clarifying the behavior programming summary requirement; eliminating the group counseling limit of twice a week not to exceed ninety 90 minutes; reducing the group counseling limit from 12 recipients to 2 to 8 recipients; inserting an annual provider certification requirement where applicable; requiring respite staff notes to address progress toward goals and objectives identified in the approved plan of care; inserting an adult day training monthly summary requirement - the department already requires this for the SCL program; elaborating on assessment and reassessment provisions; expanding class III incidents to include a medication error involving hospitalization and an admission to an acute or psychiatric hospital; elevating chemical and physical restraints from a class II to class III incident; changing the name of structured day services to adult day training in order to be consistent with the SCL program; elaborating on emergency review committee and emergency application provisions; adding community day supports and goods and services to the consumer-directed option (CDO); consistent with the consumer-directed option policies in the home and community based waiver services regulation and the Michelle P. waiver services regulation adding the following reasons for involuntary termination from CDO participation: the recipient's plan of care indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the recipient's safety or welfare due to being left alone without a caregiver present, or the recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff; adding CDO budget adjustment provisions; clarifying that a support broker must be available to a consumer 24 hours a day, 7 days a week by phone or in person; inserting CDO financial management provisions; and inserting a section establishing electronic signature provisions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure the health, safety and welfare of ABI waiver service recipients and to replace the prior residential reimbursement model with one tailored to recipients' needs as well as more cost effective. Additionally, the amendment is necessary to clarify policies and ensure consistency with the corresponding waiver approved by the Centers for Medicare and Medicaid Services (CMS).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 194A.010(1) and 194A.050(1) by inserting safeguards to protect ABI waiver service recipients; by establishing a cost efficient residential care service model tailored to recipients' needs and by ensuring compliance with the corresponding CMS-approved waiver.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of KRS 194A.010(1) and 194A.050(1) by inserting safeguards to protect ABI waiver service recipients; by establishing a cost efficient residential care service model tailored to recipients' needs and by ensuring compliance with the corresponding CMS-approved waiver.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are 177 individuals receiving ABI waiver services and 24 providers of ABI waiver services pursuant to this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will have to comply with new requirements including a case management quarterly summary report, addressing progress toward goals and outcomes in respite staff notes, and utilizing the admission/discharge (MAP-24C) form for case management agency changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Some providers could experience additional minimal administrative costs as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The recipients' safety and welfare are enhanced as a result of the amendment.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that the amendment - implemented in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $457,200 in the first fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services as previously DMS two (2) levels - a staffed residence reimbursed at $200/day and a group home reimbursed at $90/day. The companion reimbursement administrative regulation reimburses for three levels of residential care (level I, II and III) at $200/day, $175/day and $75/day respectively.

(b) On a continuing basis: DMS estimates that the amendment in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $466,200 in the second fiscal year of implementation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an 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: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not applied in this administrative regulation because it is applicable 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? The Department for Medicaid Services will be impacted by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 441.300 - 310.

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

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

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

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) estimates that the amendment - implemented in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $457,200 in the first fiscal year of implementation. The cost avoidances are primarily due to restructuring residential services that were 2 DMS levels - a staffed residence reimbursed at $200/day and a group home reimbursed at $90/day. The companion reimbursement administrative regulation reimburses for three levels of residential care (level I, II and III) at $200/da7, $175/day and $75/day respectively.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that the amendment - in conjunction with the companion reimbursement administrative regulation - will result in a cost avoidance of $466,200 in the second fiscal year 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: No additional expenditures are necessary to implement this amendment.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 2:150. Probationary certificate for teachers of engineering and technology education.

RELATES TO: KRS 161.020, 161.028(1)(a), (c), 161.030
STATUTORY AUTHORITY: KRS 161.028(1)(a), (c), 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualification for their respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Pursuant to KRS 161.028, a teacher education institution is required to be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of engineering and technology [education].

Section 1. Definition. "Qualified teacher" means a teacher who holds certification as an engineering and [a] technology [education] teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. Requirements for a Probationary Certificate for Teachers of Engineering and Technology [Education]. (1) If a qualified teacher is not available for the position of engineering and technology [education] teacher as attested to by the local superintendent, the superintendent may request, by filing a Form TC-ET with the Education Professional Standards Board that a one (1) year probationary certificate be issued [for a specific technology education offering] as approved by the Division of Career and Technical Education to a teacher who:

(a) Holds one (1) of the following:

1. A valid classroom teaching certificate for teaching in the middle school or secondary school; or

2. A bachelor's degree in a related area of concentration or major approved by a Division of Career and Technical Education engineering and technology consultant and a designated university teacher educator;

(b)1. Has a cumulative grade point average of 2.5 on a 4.0 scale; or

2. Has a grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(c) Meets the minimum standards for admission to a teacher education preparation program at an approved institution of higher education;

(d) Develops a continuous plan for curriculum completion with an approved institution for engineering and technology [education]; and

(e) Documents 1000 clock hours or six (6) months of full-time employment of work related experience or other exceptional life experience related to teaching engineering and technology [education].

(2) Upon completion of all requirements established in subsection (1) of this section, the candidate shall be issued a probationary certificate for teachers of engineering and technology [education], valid for one (1) year. [The Division of Career and Technical Education, in cooperation with a technology education teacher educator, shall grant approval for each course to be taught by a probationary teacher.]

Section 3. Requirements for Renewal of a Probationary Certificate for Teachers of Engineering and Technology [Education]. (1) The first renewal of the probationary certificate for teachers of engineering and technology [education] shall be for one (1) year, based upon the successful completion of the following requirements:

(a) Evidence of employment by a participating district;

(b) Completion of eighteen (18) clock hours of orientation and management training provided through the technology education new teacher institute, within the first six (6) weeks of employment;

(c) Completion of at least six (6) semester hours from the continuous curriculum plan; and

(d) Successful completion of the internship program required by KRS 161.030 and 16 KAR 7:010.

(2) The probationary certificate may be renewed a maximum of two (2) times and shall require at the time of application proof of the completion of at least six (6) hours of additional credit from the preapproved continuous curriculum plan.

(3) Upon successful completion of all requirements for an approved teacher preparation program, including successful completion of all required assessments identified in 16 KAR 6:010, a professional certificate for engineering and [industrial] technology shall be issued valid for five (5) years.

Section 4. [Approval of Additional Technology Offerings. A teacher with a probationary certificate may be approved to teach additional technology education offerings upon recommendation by the Division of Career and Technical Education and the technology education teacher educator.

Section 5.] Upon recommendation by the teacher education institution, teaching experience performed in a full-time position requiring certification for engineering and technology [education] teachers shall be substituted for the student teaching requirement.

Section 5. Incorporations by Reference. (1) Form TC-ET, 09/2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: September 20, 2010

FILED WITH LRC: October 1, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2010 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, 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 November 30, 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of engineering and technology.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to school districts and applicants of the requirements for obtaining a probationary

certificate for teaching engineering and technology.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the process and states the requirements for obtaining a probationary certificate for teaching engineering and technology.

(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 reflects the change in the name of the technology education certificate now known as engineering and technology in 16 KAR 2:010 and incorporates by reference a new application form, TC-ET, for this certification.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure consistency in the teacher certification regulations and to ensure proper processing of applications for probationary certificates for teachers of engineering and technology.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statues, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.

(d) How the amendment will assist in the effective administration of the statutes: This amendment delineates the process and states the requirements for obtaining a probationary certificate for teaching engineering and technology.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet for Workforce Investment, the Kentucky Department of Education, 174 Kentucky school districts, 30 educator preparation programs, and educators seeking new and additional teacher certification in occupation-based and career and technical education.

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

(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 school districts, the Cabinet for Workforce Investment, and applicants will have to complete the new form when applying for a probationary certificate for teachers of engineering and technology.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Cabinet for Workforce Development, the Kentucky Department of Education, and districts will be positively affected by an additional supply of teachers of engineering and technology.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

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, regional universities, the Cabinet for Workforce Investment, the Kentucky Department of Education, and the Education Professional Standards Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1) and KRS 161.030

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be 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? There should be no revenue generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no revenue generated.

(c) How much will it cost to administer this program for the first year? There should be no revenue generated.

(d) How much will it cost to administer this program for subsequent years? There should be no revenue generated.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a revenue costing regulation, but merely establishes the testing requirements for teacher candidates to obtain certification.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 6:020. Written examination prerequisites for occupation-based career and technical education teachers.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(3)(a) requires that all new teachers, including out-of-state teachers with less than two (2) years' experience, successfully complete appropriate written tests prior to initial certification in Kentucky and serve a one (1) year internship. This administrative regulation establishes the tests and passing scores for occupation-based career and technical education teachers certified under 16 KAR 2:220.

Section 1. (1) All new information technology, industrial education, health science, human service [~~services occupation~~], and public service teacher applicants, and other applicants for occupation-based career and technical education teacher certificates both with and without a teacher preparation degree, and out-of-state applicants for occupation-based career and technical education certification with less than two (2) years of teaching experience shall successfully complete the appropriate written tests prior to initial Kentucky certification.

(2) Each applicant without an educator preparation degree

shall successfully complete either the Pre-Professional Skills Test (PPST) or the COMPASS Test for communication skills and general knowledge.

(3) All applicants shall demonstrate subject matter competency via passage of the specialty test in the occupational area for which certification is to be granted or completion of the appropriate state or national industry licensure, certification, or registration as established in this administrative regulation.

(4) The certificates, examinations, or [~~and examination~~] prerequisites shall be divided into the following three (3) [~~four (4)~~] categories:

(a) Industrial education and information technology:

1. National Occupational Competency Testing Institute's (NOCTI) Teacher Occupational Competency Test (TOCT) if one (1) corresponding to the teaching specialty is available;

2. Kentucky Department of Education or Kentucky Department of Workforce Investment developed or identified assessment corresponding to the teaching specialty;

3. Appropriate state or national industry licensure, certification, or registration; or

4. Minimum postsecondary educational attainment in a related area of study;

(b) Health science and human services.

1. [~~services occupations.~~] The appropriate state or national industry licensure, certification, or registration; or

2. Minimum postsecondary education attainment in a related area of study; or

(c) Public-service. The appropriate state or national industry licensure, certification, or registration[~~; or~~

~~(d) Information technology. The appropriate national industry-recognized information technology certification~~].

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

(1) Preprofessional Skills Test:

(a) Reading - 167;

(b) Mathematics - 166; and

(c) Writing - 167;

(2) In lieu of the Preprofessional Skills Tests identified in subsection (1) of this section, a new teacher applicant may meet the testing requirement by obtaining the following COMPASS Test scores:

(a) Reading - 78;

(b)1. Prealgebra - 48; or

2. Algebra - any reported score; and

(c) Writing - 68.

(3) Specialty area tests or other examination prerequisites for industrial education certification:

(a) Auto body technology and collision repair and refinish:

1. NOCTI Collision Repair/Refinishing Technology Test - 61; or

2. Automotive Service Excellence (ASE) certification;

(b) Automotive technology:

1. NOCTI Automotive Technology Test - 63; or

2. Automotive Service Excellence (ASE) certification;

(c) Aviation flight technician. Federal Aviation Administration certified commercial license with instructor endorsement;

(d) Aviation maintenance technician. Federal Aviation Administration certified airframe and power plant;

(e) Building and apartment maintenance. NOCTI Building Trades Maintenance - 52;

(f) Construction Carpentry. NOCTI Carpentry - 58;

(g) Computer Aided Drafting and Drafting technology. NOCTI Technical Drafting - 62;

(h) Diesel technology:

1. NOCTI Diesel Mechanics - 62; or

2. Automotive Service Excellence (ASE) certification;

(i) Digital media. No test identified;

(j) Electrical technology. NOCTI Electrical Technology Construction - 45;

(k) Engineering technology. Bachelor's degree in engineering or engineering technology;

(l) Environmental technology. No test identified;

(m) HVAC and Air conditioning technology. No test identified;

(n) Heavy equipment. Commonwealth of Kentucky license for equipment taught;

(o) Industrial chemical technology. Bachelor's degree in chemistry or related sciences;

(p) Industrial electronics technology. No test identified;

(q) Industrial maintenance technology. NOCTI Industrial Maintenance Mechanic - 44;

(r) Interior finishing and design. No test identified;

(s) Machine tool technology. NOCTI Precision Machining - 50;

(t) Major appliance technology. No test identified;

(u) Manufacturing. NOCTI Industrial Maintenance Mechanic - 44;

(v) Marine technology. No test identified;

(w) Masonry - No test identified;

(x) Metal fabrication. No test identified;

(y) Multimedia technology:

1. Macromedia Certified Professional; or

2. Adobe Certified Expert;

(z) Plastics technology. No test identified;

(aa) Plumbing technology. NOCTI Plumbing - 55;

(bb) Printing technology. No test identified;

(cc) Small engine and motorcycle repair technology:

1. NOCTI Small engine technology - 71; or

2. Equipment and Engine Training Council (EETC) Outdoor Power Equipment Certification;

(dd) Visual communication art.

1. NOCTI Advertising and Design - 69; or

2. Adobe-certified expert in Photoshop or Illustrator;

(ee) Welding:

1. NOCTI Welding - 53; or

2. American Welding Society (AWS) Certified Welder; or

(ff) Wood manufacturing technology. No test identified;

(4) Specialty area tests or other examination prerequisites for health science and human service:

(a) Allied health sciences. Active licensure, certification, or registration by a state or nationally-recognized accrediting agency as a professional health care practitioner following completion of a minimum of an associate degree or technical diploma preparation program;

(b) Barbering. A license for teacher of barbering issued by the Kentucky Board of Barbering;

(c) Biomedical sciences. Baccalaureate or higher degree in biomedical or health science area.

(d) Culinary arts. In the field of culinary arts, an individual shall provide proof of one (1) of the following prerequisites:

1. NOCTI Commercial Foods - 55; or

2. American Culinary Federation Professional Certification.

(e) Cosmetology. A license for instructor of cosmetology issued by the Kentucky Board of Hairdressers and Cosmetologists;

(f) Health science. An active Registered Nurse License in Kentucky and meet applicable accrediting body state and federal requirements;

(g) Practical nursing. An active Registered Nurse License in Kentucky and baccalaureate or higher degree in nursing.

(5) Specialty area tests or other examination prerequisites for public service:

(a) EMS training. First Responder Instructor Certification and EMT Instructor Certification by the Kentucky Board of Emergency Medical Services;

(b) Fire and rescue training. State Fire Commission Instructor Certification;

(c) Law Enforcement. Certification as a police officer or police instructor from the Kentucky Law Enforcement Council; or

(6) Specialty area tests for information technology:

(a) Computing Technology Industry Association (CompTIA):

1. A+ Certification;

2. Security+ Certification; or

3. Network+ Certification;

(b) Cisco Certified Network Associate (CCNA);

(c) Microsoft Certified Professional (MCP);

(d) Novell Certified Administrator (CAN); or

(e) NOCTI Computer Technology Test - 63. [~~Specialty area tests or other examination prerequisites for occupation-based certi-~~

~~fication:~~

~~(a) Air conditioning technology. NOCTI Heating, Ventilation and Air Conditioning (#144) - 63;~~

~~(b) Aviation flight technician. Federal Aviation Administration certified commercial license with instructor endorsement;~~

~~(c) Aviation maintenance technician. Federal Aviation Administration certified airframe and power plant;~~

~~(d) Major appliance technology. NOCTI Appliance Repair (#277) - 64;~~

~~(e) Auto body technology:~~

~~1. NOCTI Collision Repair/Refinishing Technology Test (#138) - 61; or~~

~~2. Automotive Service Excellence (ASE) certification;~~

~~(f) Automotive technology:~~

~~1. NOCTI Automotive Technician Test (#303) - 63; or~~

~~2. Automotive Service Excellence (ASE) certification;~~

~~(g) Building and apartment maintenance. NOCTI Building Trades Maintenance (#125) - 52;~~

~~(h) Wood manufacturing technology. NOCTI Cabinetmaking and Millwork (#124) - 49;~~

~~(i) Carpentry. NOCTI Carpentry (#207) - 58;~~

~~(j) Visual communication art. NOCTI Advertising and Design (#136) - 69;~~

~~(k) Diesel technology:~~

~~1. NOCTI Diesel Mechanics (#152) - 62; or~~

~~2. Automotive Service Excellence (ASE) certification;~~

~~(l) Computer-aided drafting. NOCTI Technical Drafting and Design (#039) - 62;~~

~~(m) Electrical technology. NOCTI Electrical Construction (#261) - 45;~~

~~(n) Electronics technology. NOCTI Electronics Technology (#253) - 44;~~

~~(o) Graphic technology. NOCTI Graphic Imaging Technology (#137) - 62;~~

~~(p) Heavy equipment operation. Commonwealth of Kentucky license for equipment taught;~~

~~(q) Industrial maintenance technology. NOCTI Industrial Technology (#076) - 44;~~

~~(r) Interior finishing and design. NOCTI Painting and Decorating (#135) - 44;~~

~~(s) Machine tool technology. NOCTI Precision Machining (#220) - 50;~~

~~(t) Masonry - NOCTI Masonry (#209) - 64;~~

~~(u) Multimedia:~~

~~1. NOCTI Graphic Imaging Technology (#137) - 62;~~

~~2. Macromedia Certified Professional; or~~

~~3. Adobe Certified Expert;~~

~~(v) Plumbing technology. NOCTI Plumbing (#110) - 55;~~

~~(w) Radio and television production. NOCTI Audiovisual Communication Technology (#249) - 52;~~

~~(x) Metal fabrication. NOCTI Sheet Metal (#211) - 60;~~

~~(y) Small engine repair technology:~~

~~1. NOCTI Air-cooled Gas Engine Repair (#256) - 71; or~~

~~2. Equipment and Engine Training Council (EETC) Outdoor Power Equipment Certification;~~

~~(z) Welding:~~

~~1. NOCTI Welding (#121) - 53; or~~

~~2. American Welding Society (AWS) Certified Welder;~~

~~(aa) Industrial chemical technology. Bachelor's degree in chemistry or related sciences;~~

~~(bb) Construction. NOCTI Carpentry (#207) - 58;~~

~~(cc) Engineering technology. Bachelor's degree in engineering;~~

~~(dd) Environmental technology. No test identified;~~

~~(ee) Heavy highway construction. No test identified;~~

~~(ff) Manufacturing:~~

~~1. NOCTI Industrial technology (#076) - 44; or~~

~~2. NOCTI Precision Machining (#220) - 50;~~

~~(gg) Marine technology. NOCTI Marine Mechanics (#131) - 78; or~~

~~(hh) Plastics technology. No test identified;~~

~~(4) Specialty area tests or other examination prerequisites for health science and human services occupations:~~

~~(a) Barbering. A license for teacher of barbering issued by the Kentucky Board of Barbering;~~

~~(b) Cosmetology. A license for instructor of cosmetology issued by the Kentucky Board of Hairdressers and Cosmetologists;~~

~~(c) Health science. Registered Nurse License in Kentucky and meet applicable accrediting body state and federal requirements;~~

~~(d) Allied health sciences. Active licensure, certification, or registration by a state or nationally-recognized accrediting agency as a professional health care practitioner following completion of a minimum of an associate degree or technical diploma preparation program;~~

~~(e) Practical nursing. Practical Nurse License in Kentucky and meet applicable accrediting body state and federal requirements.~~

~~(f) Culinary arts. In the field of culinary arts, an individual shall provide proof of one (1) of the following prerequisites:~~

~~1. NOCTI Quantity Foods (#225) - 55;~~

~~2. NOCTI Quantity Food Preparation (#117) - 39; or~~

~~3. American Culinary Federation Professional Certification.~~

~~(5) Specialty area tests or other examination prerequisites for public service:~~

~~(a) Law Enforcement. Certification as a police officer or police instructor from the Kentucky Law Enforcement Council;~~

~~(b) Fire and rescue training. State Fire Commission Instructor Certification;~~

~~(c) EMS training. First Responder Instructor Certification and EMT Instructor Certification by the Kentucky Board of Emergency Medical Services; or~~

~~(6) Specialty area tests for information technology:~~

~~(a) Computing Technology Industry Association (CompTIA):~~

~~1. A+ Certification;~~

~~2. I Net+ Certification;~~

~~3. Server+ Certification; or~~

~~4. Network+ Certification;~~

~~(b) Cisco Certified Network Associate (CCNA);~~

~~(c) Microsoft Certified Professional (MCP);~~

~~(d) Novell Certified Administrator (CAN); or~~

~~(e) NOCTI Computer Technology Test (#226) - 63.~~]

Section 3. Teacher applicants in any occupation-based career and technical education programs for which no appropriate specialty test is yet available shall not be required to take a specialty test, except for research and validation purposes. After a new program has been piloted and fully implemented, a test shall be developed or identified and a new teacher applicant shall be required to pass a designated specialty test.

Section 4. (1) Applicants for initial certification may take the written tests on any of the dates established by the Kentucky Department of Workforce Investment, with the tests to be administered on a regular basis.

(2) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Kentucky Department of Workforce Investment.

(3) An applicant shall seek information regarding the dates and location of the tests and make application to the Kentucky Department of Workforce Investment for the appropriate tests prior to the deadlines established and sufficiently in advance of anticipated employment.

(4) Applicants shall authorize test results to be forwarded to the Education Professional Standards Board.

Section 5. Applicants shall pay an examination fee directly to the testing agency for the required tests. The testing agency shall publish the examination fee with the publication of testing dates.

Section 6. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one (1) of the scheduled test administrations. All retakes shall meet the regularly scheduled testing dates. Initial certification shall not be granted until acceptable scores are achieved in each of the required areas.

Section 7. Assessment Recency. (1) An applicant for initial or additional Kentucky teacher certification shall comply with the assessment recency requirements established in this section.

(2) A test established in this administrative regulation shall be valid for five (5) years from the test administration date.

(3) A passing score on a test established in this administrative regulation and completed on or after January 1, 2002 shall be valid for five (5) years from the test administration date.

(4)(a) A teacher shall complete application for certification to the Education Professional Standards Board within the five (5) year validity period of the test and the passing score.

(b) A teacher who fails to complete application for certification to the Education Professional Standard Board within the five (5) year validity period of the test and the passing score shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(5) The test administration date shall be established by the National Occupational Competency Testing Institute or other authorized test administrator.

Section 8. The Education Professional Standards Board in conjunction with the Department of Workforce Investment shall collect data and conduct analyses of the impact of these tests as to permit a review of these administrative regulations on a regular basis.

LORRAINE WILLIAMS, Chairperson

APPROVED BY AGENCY: September 20, 2010

FILED WITH LRC: October 1, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2010 at 9 a.m. at the offices of the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Conference Room A, 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 November 30, 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: Alicia A. Sneed, Director of Legal Services, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alicia A. Sneed, Director of Legal Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the written examination prerequisites and the corresponding passing scores for occupation-based and career and technical education teachers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide notice to teacher candidates of the assessment requirements for obtaining and maintaining a teaching certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 places the responsibility of selecting the assessments and determining the minimum acceptable level of achievement on each assessment on the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation lists the required teacher certification assessments and their corresponding minimum acceptable scores.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes the primary assessments used in some areas of occupation-based certification due to the National Occupational Competency Testing Institute (NOCTI) ending production on these tests. Where possible, alternative licensures or other requirements have been added in certification areas where NOCTI tests no longer exist. This amendment also modifies some certificate names and prerequisites which reflect changes in the industry and the needs of Career and Technical schools.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that the required assessments and corresponding scores are adequately set to produce the most competent educators.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statues, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. This amendment establishes the required assessments and corresponding passing scores for Kentucky teacher certification.

(d) How the amendment will assist in the effective administration of the statutes: This amendment more closely aligns assessment options with opportunities within an actual school setting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet for Workforce Investment, the Kentucky Department of Education, 174 Kentucky school districts, 30 educator preparation programs, and educators seeking new and additional teacher certification in occupation-based and career and technical education.

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

(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 school districts will not be required to take any additional action. The educator preparation programs will need to continue to direct students to the Education Professional Standards Board website for current assessment requirements. Applicants will need to continue to refer to the Education Professional Standards board website for current assessment requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should not be any additional cost to the entities impacted by the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The educator preparation programs and applicants will be positively affected by the clarifications to the regulation. The Cabinet for Workforce Development, the Kentucky Department of Education, and districts will be positively affected by a supply of teachers who are competent in their content area.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

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

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

(9) TIERING: Is tiering applied? No, tiering does not apply

since all candidates for each certificate will be held to the same standard.

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, regional universities, the Cabinet for Workforce Investment, the Kentucky Department of Education, and the Education Professional Standards Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.028(1) and 161.030.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be 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? There should be no revenue generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There should be no revenue generated.

(c) How much will it cost to administer this program for the first year? There should be no revenue generated.

(d) How much will it cost to administer this program for subsequent years? There should be no revenue generated.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a revenue costing regulation, but merely establishes the testing requirements for teacher candidates to obtain certification.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(Amendment)

102 KAR 1:225. General compliance with federal tax laws.

RELATES TO: KRS 161.716, 26 C.F.R., 26 U.S.C 401(a)(7),(8), (25), 26 U.S.C. 414(d), (p), (u), 26 U.S.C. 503(b), 38 U.S.C. 4301 -4335

STATUTORY AUTHORITY: KRS 161.310(1), 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. Kentucky Teachers' Retirement System shall administer the Retirement System as a qualified defined benefit plan pursuant to 26 U.S.C. 401(a) and 26 U.S.C. 414(d) of the Internal Revenue Code, 26 U.S.C., 26 C.F.R., and such other Internal Revenue Code Sections as applicable. This administrative regulation establishes Kentucky Teachers' Retirement System's compliance with 26 U.S.C 401(a) and 503(b) in order for the Kentucky Teachers' Retirement System to maintain its tax qualified status as a public defined benefit plan. This administrative regulation also includes provisions intended to comply with the Heroes Earnings Assistance and Relief Tax Act of 2008, "HEART Act". This administrative regulation adds provisions that have been required as part of the determination letter process regarding vested benefits.

Section 1. Compliance with 26 U.S.C. 401(a)(7) and (8) for Vesting and Forfeitures. (1) A plan member shall be 100 percent vested in the member's accumulated contributions at all times.

(2)(a) In conformity with 26 U.S.C. 401(a)(8), a forfeiture of benefits by a member or former member of the plan shall not be used to pay benefit increases.

(b) Forfeitures shall be used to reduce employer contributions.

(3) Upon termination or partial termination of the Kentucky Teachers' Retirement System, or the complete discontinuance of contributions, a member shall have a nonforfeitable interest in his accrued benefit to the extent funded.

(4) In order to comply with Internal Revenue Service interpretations, a member shall have a nonforfeitable interest in his accrued benefit at attainment of age sixty (60) and the completion of five (5) years of service.

Section 2. Compliance with 26 U.S.C. 414(p) for Qualified Domestic Relations Orders. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in 26 U.S.C. 414(p), then the applicable requirements of 26 U.S.C. 414(p) shall be followed by the retirement system.

Section 3. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. (1) Effective December 12, 1994, Contributions, benefits, and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 - 4335.

(2) Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualifying military service, as defined in 38 U.S.C. Chapter 43 to the extent required by section 26 U.S.C. 401(a)(37) of the Internal Revenue Code, survivors of a member of the Kentucky Teachers' Retirement System, shall be entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(3) Beginning January 1, 2009, to the extent permitted by (sections 3401(h) and 414(u)(2) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service, as defined in 38 U.S.C. Chapter 43, from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as annual compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Section 4. Compliance with 26 U.S.C. 503(b) for Prohibited Transactions. The board shall not engage in a transaction prohibited by 26 U.S.C. 503(b).

Section 5. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions.

(1) Kentucky Teachers' Retirement System shall comply with 26 U.S.C. 401(a)(25) to determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by resolution for specific benefit calculation purposes.

(2) These benefits shall not be subject to employer discretion.

BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: September 20, 2010

FILED WITH LRC: October 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2010, at 9 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 this date, the heating may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the

opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 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: Robert B. Barnes, General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 848-8599.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Teachers' Retirement System's compliance with specified provisions of the Internal Revenue Code in order for the retirement system to maintain its tax qualified status as a public defined benefit plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure compliance with specified provisions of the Internal Revenue Code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by ensuring the absence of conflicts with federal laws and proper administration of the retirement system's qualified defined benefit plan.

(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 removing any conflicts with applicable federal law.

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

(a) How the amendment will change this existing administrative regulation: The amendments address the vesting rights of members to benefits in the retirement system.

(b) The necessity of the amendment to this administrative regulation: The amendments delineate when and how a member shall have a nonforfeitable interest in his accrued benefit.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments delineate when and how a member shall have a nonforfeitable interest in his accrued benefit.

(d) How the amendment will assist in the effective administration of the statues: The amendments establish when a member's right to benefits will vest.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all members of the retirement system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The members will not have to take any overt action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the members of the retirement system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be on notice as to the vesting of their accrued benefits.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.716, 26 C.F.R., 26 U.S.C. 401(a)(7), (8), (25), 26 U.S.C. 414(d), (p), (u), 26 U.S.C. 503(b), 38 U.S.C 4301-4335

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

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

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(Amendment)

102 KAR 1:230. Limitations on benefits.

RELATES TO: KRS 161.611, 26 C.F.R. 1.415, 26 U.S.C. 125, 132(f)(4), 402, 414, 415, 417, 457, 3401, 6041, 6051, 6052

STATUTORY AUTHORITY: KRS 161.310(1), 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of members of the retirement system. This administrative regulation establishes the limitations on benefits required by 26 U.S.C. 415.

Section 1. Definitions. (1) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(2) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

(3) "Annual benefit" means, for purposes of the 415(b) limit, a benefit payable annually in the form of a straight life annuity (without ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C.

415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)). The "benefit attributable" is determined in accordance with 26 C.F.R. 1.415(b).

(4) "Defined dollar benefit limitation" means $160,000, as adjusted, effective January 1 each year, in the manner established by the Secretary of the United States Treasury pursuant to 26 U.S.C. 415(d), and payable in the form of a straight life annuity. A limitation as adjusted under 26 U.S.C. 415(d) applies to limitation years for which the adjustment applies.

(5) "Limitation year" means the calendar year.

(6) "Maximum permissible benefit" means the defined benefit dollar limitation (adjusted or limited, if required, according to this administrative regulation).

(7) "Nonqualified service credit" means, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States or any state, agency, or political subdivision thereof (other than military service or service for credit that was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3);

(b) Service as an employee, other than as an employee described in paragraph (a) of this subsection, of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) that is a public, private, or sectarian school that provides elementary education or secondary education through grade twelve (12), or a comparable level of education as determined pursuant to the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees described in paragraph (a) of this subsection; or

(d) Military service, other than qualified military service pursuant to 26 U.S.C. 414(u), recognized by the retirement system.

Section 2. Adjustments and Limitations. (1) If the member has fewer than ten (10) years participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction.

(a) The numerator shall be the number of years (or part thereof) of participation in the plan, and the denominator shall be ten (10).

(b) The reduction established in this subsection shall not apply to preretirement death and disability benefits.

(2) If the benefit of a member begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the participant at the earlier age shall be an annual benefit payable in the form of a straight life annuity, beginning at the earlier age, that shall be the actuarial equivalent of the defined benefit dollar limitation applicable to the member at age sixty-two (62) (adjusted pursuant to subsection (1) of this section, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) shall be determined as the lesser of:

(a) The actuarial equivalent (at the earlier age) of the defined benefit dollar limitation computed using the interest rate and mortality table specified by the system actuary; and

(b) The actuarial equivalent (at the earlier age) of the defined benefit dollar limitation computed using a five (5) percent interest rate and the applicable mortality table as specified by the system actuary.

1. Any decrease in the defined benefit dollar limitation determined in accordance with this subsection shall not reflect a mortality decrement if benefits are not forfeited upon the death of the participant.

2. If any benefits are forfeited upon death, the full mortality decrement shall be taken into account.

(3) The reductions provided for in this subsection shall not apply to preretirement disability benefits or preretirement death benefits.

(4) If the benefit of a participant begins after the participant attains age sixty-five (65), the defined benefit dollar limitation applicable to the member at the later age shall be the annual benefit payable in the form of a straight life annuity, beginning at the later age, that shall be actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age sixty-five (65) (adjusted pursuant to subsection (1) of this section, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after sixty-five (65) shall be determined as follows:

(a) The lesser of the actuarial equivalent (at the later age) of the defined benefit dollar limitation computed using the interest rate and mortality table specified by the system actuary; and

(b) The actuarial equivalent (at the later age) of the defined benefit dollar limitation computed using a five (5) percent interest rate assumption and the mortality table specified by the system actuary. For these purposes, mortality between age sixty-five (65) and the age at which benefits commence shall be ignored.

(5) If the benefit under the retirement system is other than the form specified in Section 1(3) of this administrative regulation, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors established in 26 C.F.R. 1.415(b).

(6) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then subsection (5) of this section shall be applied by either reducing the section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount determined using the assumptions established in 26 C.F.R. 1.415(b)-1(c)(2)(ii) that takes into account the additional benefits under the form of benefit as follows:

(a) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) does not apply, a monthly benefit, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date that is the "lesser of", if adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity (if any) payable to the member under the retirement system commencing at the same annuity starting date as the form of benefit to the member; or

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five (5) percent interest assumption (or the applicable statutory interest assumption) and:

a. For limitation years prior to January[~~February~~] 1, 2009, the applicable mortality tables described in 26 C.F.R. 1.417(e)-1(d)(2); and

b. For limitation years after December 31, 2008, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B).

(8) Effective on and after January 1, 2009, for purposes of applying the 415(b) limit to a member, the following shall apply:

(a) A member's applicable 415(b) limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments; and

(b)1. To the extent that the member's annual benefit equals or exceeds the 415(b) limit, the member shall no longer be eligible for cost of living increases until the benefit plus the accumulated increases are less than the 415(b) limit;

2. In any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit pursuant to 26 U.S.C. 415(d) and 26 C.F.R. 1.415(b).

Section 3. Participation in Other Qualified Plans: Aggregation of Limits. (1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in 26 U.S.C. 414(j) maintained by the member's employer in a retirement system shall apply as if the total benefits payable under all these defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in 26 U.S.C. 414(i) maintained by the member's employer in a retirement system shall apply as if the total annual additions under all these defined contribution plans in which the member has been a member were payable from one (1) plan.

Section 4. Effect on Members. (1) Benefit increases resulting from the increase in the limitations of 26 U.S.C. 415(b) shall be provided to all current and former members, with benefits limited by 26 U.S.C. 415(b), who have an accrued benefit under the plan immediately prior to the effective date.

(2) These benefit increases shall not be provided to current

and former members who have an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under 26 U.S.C. 415(b).

Section 5. Benefits Not Taken into Account for 415(b) Limit. The following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit that is not directly related to retirement income benefits; and

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

Section 6. 415(c) Limit. Except as provided in Section 7 of this administration regulation, after-tax member contributions or other annual additions with respect to a member shall not exceed the lesser of $40,000 (as adjusted pursuant to 26 U.S.C. 415(d)) or 100 percent of the member's compensation.

(1)(a) Annual additions shall be defined to mean the sum (for any year) of employer contributions to a defined contribution plan, post-tax member contributions, and forfeitures credited to a member's individual account.

(b) Member contributions shall be determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying the 415(c) limits only, the definition of compensation, if applicable, shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by 26 C.F.R. 1.415(c)-2, except, that member contributions picked up under 26 U.S.C. 414(h) shall not be treated as compensation.

(3) Unless another description of compensation that is permitted by 26 C.F.R. 1.415(c)-2 is specified by a retirement system, compensation shall be described as wages within the meaning of 26 U.S.C. 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement pursuant to 26 U.S.C. 6041(d), 6051(a)(3) and 6052 and shall be determined without regard to any rules under 26 U.S.C. 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).

(a)1. For limitation years beginning on and after January 1, 1998, compensation shall also include amounts that would otherwise be included in compensation but for an election under 26 U.S.C. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

2. For limitation years beginning on and after January 1, 2001, compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of 26 U.S.C. 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of two and one-half (21/2) months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is:

a. Regular compensation for services during the employee's regular working hours;

b. Compensation for services outside the employee's regular working hours, such as overtime or shift differential; or

c. Commissions, bonuses, or other similar payments; and

2. Absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with unused accrued bona fide sick, vacation, or other leave that the employee would have been able to use if employment had continued.

(c) Back pay, within the meaning of 26 C.F.R. 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included pursuant to this description.

(d) If the annual additions for any member for a plan year exceed the limitation under 26 U.S.C. 415(c), the Internal Revenue Code, the excess annual addition shall be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

Section 7. Service Purchases under Section 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under a retirement system, then the requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit.

(2) For purposes of applying this section, a retirement system shall not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation pursuant to 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3)(a) Permissive service credit shall consist of service credit:

1. Recognized by a retirement system for purposes of calculating a member's benefit under a retirement system;

2. The member has not received under a retirement system; and

3. That the member may receive only by making a voluntary additional contribution, in an amount determined under a retirement system, which does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (a)2 of this subsection, may include service credited in order to provide an increased benefit for service credit that a member is receiving under a retirement system.

(4) The retirement system shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this subparagraph; or

(b) Any nonqualified service credit is taken into account pursuant to this section before the member has at least five (5) years of participation under a retirement system.

(5) In the case of service described in Section 1(7)(a), (b), or (c) of this administrative regulation, the service shall be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one (1) plan.

(6) In the case of a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 26 U.S.C. 457(e)(17)(A) applies, without regard to whether the transfer is made between plans maintained by the same employer:

(a) The limitations of subsection (4) of this section shall not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable under federal law to a retirement system shall apply to these amounts and any benefits attributable to these amounts.

(7)(a) For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased under the terms of the retirement system as in effect on August 5, 1997.

(b) For purposes of this subsection, an eligible member shall be an individual who first became a member in the retirement system before January 1, 1998.

Section 8. Modification of Contributions for 415(c) and 415(n) Purposes. The retirement system may modify a request by a member to make a contribution to a retirement system if the amount of the contribution would exceed the limits provided in 26 U.S.C. 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the retirement system may establish a periodic

payment plan for the member to avoid a contribution in excess of the limits established in 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to section (1) of this subsection shall not avoid a contribution in excess of the limits established in 26 U.S.C. 415(c) or 415(n), the retirement system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section 9. Repayments of Cashouts. Any repayment of contributions, including interest thereon, to the retirement system with respect to an amount previously refunded upon a forfeiture of service credit under the retirement system or another governmental plan maintained by the Commonwealth or a local government within the Commonwealth shall not be taken into account for purposes of the 415(b) or (c) limits.

BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: September 20, 2010

FILED WITH LRC: October 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2010, at 9 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 this date, the heating may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 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: Robert B. Barnes, General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 848-8599.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Teachers' Retirement System's compliance with specified provisions of the Internal Revenue Code.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure compliance with specified provisions of the Internal Revenue Code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by ensuring the absence of conflicts with federal laws and proper administration of the retirement system's qualified defined benefit plan.

(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 removing any conflicts with applicable federal law.

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

(a) How the amendment will change this existing administrative regulation: The amendment corrects an effective date regarding limitations on benefits required by 26 U.S.C. 415 and provides a correction mechanism for certain contributions.

(b) The necessity of the amendment to this administrative regulation: To accurately reflect the effective date for limitations on benefits required by 26 U.S.C. 415 and to allow for correction of excess annual additions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment accurately reflect the effective date required by 26 U.S.C. 415 and IRS correction programs.

(d) How the amendment will assist in the effective administration of the statues: The amendment will permit the retirement system to correct excess annual additions as permitted by the IRS.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to members of the retirement system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The members will not have to take any overt action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the members of the retirement system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be able to make corrections to excess annual additions not previously available.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.611; 26 C.F.R. 1.415; 26 U.S.C. 125, 132(f)(4), 402, 414, 415, 417, 457, 3401, 6041, 6051, 6052.

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

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

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(Amendment)

102 KAR 1:245. Rollovers and transfers of contributions to other plans.

RELATES TO: KRS 161.220 -161.990, 26 U.S.C. 401(a), 402(c), 403(a), (b), 408, 408A, 414(p), 457(b)

STATUTORY AUTHORITY: KRS 161.310(1), 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. This administrative regulation establishes what constitutes eligible rollover distributions, eligible retirement plans, distributions, distributees, and direct rollovers for purposes of compliance with 26 U.S.C. 401(a).

Section 1. "Eligible rollover distribution" shall include any distribution of all or any portion of the balance to the credit of the distributee, except:

(1) A distribution that is one (1) of a series of substantially equal periodic payments made at least annually:

(a) For the life or life expectancy of the distributee and the distributee's designated beneficiary;

(b) The joint lives or joint life expectancy of the distributee and the distributee's designated beneficiary; or

(c) For a specified period of ten (10) years or more;

(2) Any distribution to the extent that the distribution shall be required pursuant to 26 U.S.C. 401(a)(9), except as provided in Section 2 of this administrative regulation;

(3) The portion of any distribution that is not includable in gross income; or

(4) Any other distribution that is reasonably expected to total less than $200 during the year.

Section 2. (1) Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. This portion may be transferred:

(a) Only to:

1. An individual retirement account or annuity described in 26 U.S.C. 408(a) or (b);

2. A qualified defined contribution plan described in 26 U.S.C. 401(a);

3. On or after January 1, 2007, to a qualified defined benefit plan described in 26 U.S.C. 401(a); or

4. An annuity contract described in 26 U.S.C. 403(b); and

(b) To an account or plan provided for in paragraph (1)2. through 4. of this subsection that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution:

1. That is includable in gross income; and

2. That is not so includable.

(2) Effective January 1, 2002, the eligible rollover distribution shall also include a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p).

(3) "Eligible retirement plan" shall include any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in 26 U.S.C. 408(a);

(b) An individual retirement annuity described in 26 U.S.C. 408(b);

(c) An annuity plan described in 26 U.S.C. 403(a);

(d) A qualified trust described in 26 U.S.C. 401(a);

(e) Effective January 1, 2002, an annuity contract described in 26 U.S.C. 403(b);

(f) Effective January 1, 2002, a plan eligible under 26 U.S.C. 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system; or

(g) Effective January 1, 2008, a Roth IRA described in 26 U.S.C. 408A.

(4)(a) "Distributee" shall include an employee or former employee and the following:

1. The employee's or former employee's surviving spouse; and

2. The employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p).

(b) Effective January 1, 2007, a "distributee" shall also include a nonspouse beneficiary who is a designated beneficiary as defined by 26 U.S.C. 401(a)(9)(E).

1. A nonspouse beneficiary shall rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution; and

2. The account or annuity shall be treated as an "inherited" individual retirement account or annuity.

(c) "Direct rollover" shall include a payment by the plan to the eligible retirement plan specified by the distributee.

Section 3. For purposes of this administrative regulation and compliance with 26 U.S.C. 401(a)(31), the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at any time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: September 20, 2010

FILED WITH LRC: October 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2010, at 9 a.m. at the Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 this date, the heating may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 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: Robert B. Barnes, General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 848-8599.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Kentucky Teachers' Retirement System's compliance with specified provisions of the Internal Revenue Code.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and ensure compliance with specified provisions of the Internal Revenue Code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by ensuring the absence of conflicts with federal laws and proper administration of the retirement system's qualified defined benefit plan.

(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 removing any conflicts with applicable federal law.

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

(a) How the amendment will change this existing administrative regulation: The amendment permits a distributee to have an eligible rollover distribution paid to an eligible retirement plan.

(b) The necessity of the amendment to this administrative regulation: The amendment will permit a distributee to have an eligible rollover distribution paid to an eligible retirement plan.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments delineates that the payment of the rollover distribution must comply with the Internal Revenue Code.

(d) How the amendment will assist in the effective administration of the statues: The amendment will permit the system to process a rollover distribution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation applies to all distributees of the retirement system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The distributees will not have to take any overt action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the distributees of the retirement system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Distributees will be able to have an eligible rollover distribution paid to an eligible retirement plan.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.220-161.990, 26 U.S.C. 401(a), 26 U.S.C. 402(c), 26 U.S.C. 403(a), (b), 26 U.S.C. 408, 26 U.S.C. 408A, 26 U.S.C. 414 (p), 26 U.S.C. 457(b).

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

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

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

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

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

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Pharmacy
(Amendment)

201 KAR 2:165. Transfer of prescription information.

RELATES TO: KRS 217.215(2), 315.191(1)(f)

STATUTORY AUTHORITY: KRS 217.215(2), 315.191(1)(a), (f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(f) authorizes the Board of Pharmacy to promulgate administrative regulations to control the transfer of prescription drug orders between pharmacists and pharmacies. This administrative regulation establishes the procedures by which a prescription may be transferred between pharmacies in the Commonwealth or between a pharmacy and an establishment located in a state or United States Territory or District outside the Commonwealth and similarly credentialed as a pharmacy by that state or U.S. Territory or District [~~from pharmacist to pharmacist~~] for the purpose of dispensing.

Section 1. (1) The transfer of prescription information for any noncontrolled substance prescription for the purpose of refill dispensing may occur if:

(a) It is orally communicated directly between two (2) pharmacists in the Commonwealth or between a pharmacist and an individual located in a state or U.S. Territory or District outside the Commonwealth and similarly credentialed as a pharmacist by that state or U.S. Territory or District;

(b) It is made through an on-line real-time computer system that provides documentation of the presence of a pharmacist or an individual located in a state or U.S. Territory or District outside the Commonwealth and similarly credentialed as a pharmacist by that state or U.S. Territory or District when the information is transferred; [~~or~~]

(c) It is made through the use of a facsimile machine and all the information required by this administrative regulation is provided to the sending and receiving pharmacist or an individual located in a state or U.S. Territory or District outside the Commonwealth and similarly credentialed as a pharmacist by that state or U.S. Territory or District; or

(d) It is made through the use of voice recording technology and all information required by this administrative regulation is provided to the sending and receiving pharmacist or an individual located in a state or U.S. Territory or District outside the Commonwealth and similarly credentialed as a pharmacist by that state or U.S. Territory or District..

(2) If in the Commonwealth the transferring pharmacist shall record the following information:

(a) That the prescription is void;

(b) The name and address of the pharmacy or the establishment located in a state or U.S. Territory or District outside the Commonwealth that is similarly credentialed as a pharmacy by that state or U.S. Territory or District to which it was transferred and the name of the pharmacist or the individual located in a state or U.S. Territory or District outside the Commonwealth that is similarly credentialed as a pharmacist by that state or U.S. Territory or Dis-

trict receiving the prescription information; and

(c) The date of the transfer and the name of the pharmacist transferring the information.

(3) If in the Commonwealth the pharmacist receiving the transferred prescription shall record the following information:

(a) That the prescription is a transfer;

(b) The date of issuance of the original prescription;

(c) The refill authorization on the original prescription;

(d) The date of original dispensing;

(e) The refill authorization remaining and the date of the last refill;

(f) The [~~pharmacy's~~] name and address of the pharmacy or the establishment located in a state or U.S. Territory or District outside the Commonwealth that is similarly credentialed as a pharmacy by that state or U.S. Territory or District and the original prescription number from which the prescription was transferred; and

(g) The name of the transferor pharmacist or the individual located in a state or U.S. Territory or District outside the Commonwealth that is similarly credentialed as a pharmacist by that state or U.S. Territory or District.

(4) Both the original prescription and the transferred prescription shall be maintained for a period of five (5) years from the date of the last refill.

(5) Pharmacies electronically accessing the same prescription record shall satisfy all information of a manual mode for a prescription transfer.

Section 2. The transfer of prescription information for a controlled substance prescription, except a Schedule II controlled substance, for the purpose of refill dispensing may occur if the transfer complies with the requirements of 21 C.F.R. 1306.25.

Section 3. Violation of a provision of this administrative regulation shall constitute unethical or unprofessional conduct in accordance with KRS 315.121(2)(d), (f), and (g).

JOEL THORNBURY, President

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 14, 2010 at noon

PUBLIC HEARING PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday November 24, 2010 at 9 a.m. at the Board's office, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person 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 Tuesday, November 30, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-7910; fax (502) 696-3806.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael Burleson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures by which a prescription may be transferred.

(b) The necessity of this administrative regulation: This regulation is necessary to notify individuals of the procedures by which a prescription can be transferred.

(c) How this administrative regulation conforms to the content of the authorizing statues: The regulation is in conformity with the authorizing statute that authorizes the board to promulgate administrative regulations regarding the transfer of prescriptions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation delineates the procedures for the transfer of prescriptions.

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

(a) How the amendment will change this existing administrative regulation: This will allow prescriptions to be transferred to and from another state or United States Territory or District outside the Commonwealth and permits the use of voice recording technology to effect transfers.

(b) The necessity of the amendment to this administrative regulation: Permits transfers for prescriptions from and to pharmacies outside the Commonwealth and permits the use of voice recording technology.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment authorizes the board to promulgate regulations regarding the transfer of prescriptions.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the transfer of prescriptions from or to a state or United States Territory or District outside the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that hundreds of prescriptions everyday will be transferred from or to pharmacies located in a state or United States Territory or District outside 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: Prescription transfers will be allowed from or to pharmacies located in a state or United States Territory or District outside the Commonwealth.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacists and pharmacies will be able to transfer prescriptions from or to pharmacies located in a state or United States Territory or District outside the Commonwealth.

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to any pharmacist or pharmacy.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a)-(f) requires or authorizes the action taken by this administrative regulation.

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

(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? Undetermined

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Social Work
(Amendment)

201 KAR 23:020. Fees.

RELATES TO: KRS 335.080(1)(d), (g), 335.090(1)(d), (g), 335.100(1)(c), (f), 335.130(1)

STATUTORY AUTHORITY: KRS 335.070(3), 335.080(1)(d), (g), 335.090(1)(d), (g), 335.100(1)(c), (f), 335.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.080(1)(d), 335.090(1)(d), and 335.100(1)(c) require the board to establish examination fees by promulgation of an administrative regulation. KRS 335.080(1)(g), 335.090(1)(g), and 335.100(1)(f) require the board to establish initial license fees by promulgation of an administrative regulation. KRS 335.130(1) requires the board to establish renewal fees by promulgation of an administrative regulation. This administrative regulation establishes these examination, license, and renewal fees.

Section 1. The fee for the licensed clinical social worker examination [~~fee~~] shall be paid directly to the Association of Social Work Boards [~~$140~~].

Section 2. The fee for the certified social worker examination [~~fee~~] shall be paid directly to the Association of Social Work Boards [~~$140~~].

Section 3. The fee for the licensed social worker examination [~~fee~~] shall be paid directly to the Association of Social Work Boards [~~$140~~].

Section 4. The initial license fee and the renewal fee for a licensed clinical social worker license shall be $200[~~$150~~].

Section 5. The initial license fee and the renewal fee for a certified social worker license shall be $125 [~~seventy-five (75) dollars~~].

Section 6. The initial license fee and the renewal fee for a licensed social worker shall be seventy-five (75) [~~fifty (50)~~] dollars.

SHARON SANDERS, Chair

APPROVED BY AGENCY: October 4, 2010

FILED WITH LRC: October 6, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2010 at 1 p.m., local time, at the Kentucky Board of Social Work, 44 Fountain Place, 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. 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 November 30, 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: Margaret Hazlette, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Margaret Hazlette, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the examination, license, and renewal fees.

(b) The necessity of this administrative regulation: This administrative is necessary to set the fees that are required for examination, licensure and the renewal of a license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.080(1)(d), 335.090(1)(d), and 335.100(1)(c) allows the board to establish examination fees. KRS 335.080(1)(g), 335.090(1)(g), and 335.100(1)(f) require the board to establish initial license fees by promulgation of an administrative regulation. KRS 335.130(1) requires the board to establish renewal fees by promulgation of an administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of examination, licensure and renewal fees.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update the process for paying examination fees to provide that the fee be paid directly to the examination service. It also raises the initial licensure fee for the three levels of licensure. Finally the amendment raises the renewal fee, which is pay once every three years, from $25 to $50, depending on the level of licensure.

(b) The necessity of the amendment to this administrative regulation: This administrative is necessary to set the fees that are required for examination, licensure and the renewal of a license.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.080(1)(d), 335.090(1)(d), and 335.100(1)(c) allows the board to establish examination fees. KRS 335.080(1)(g), 335.090(1)(g), and 335.100(1)(f) require the board to establish initial license fees by promulgation of an administrative regulation. KRS 335.130(1) requires the board to establish renewal fees by promulgation of an administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation informs the applicants of examination, licensure and renewal fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1100 applications for initial license and renewal as a licensed social worker, certified social worker, and licensed clinical social worker per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment requires that new ap-

plicants pay the examination fee directly to the entity that administers the test. Licensees renewing their licenses will be required to pay the renewal fees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensed clinical social workers will pay an additional $50 for a three year renewal. Licensed and certified social workers will pay an additional $25 for a three year renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for the examination will be able to pay the examination fee directly to the examination provider. The board will continue to provide services to its licensees.

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

(a) Initially: The board estimates that no additional costs will be incurred by this amendment.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees and applicants

(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 directly establishes or increases fees. Licensed clinical social workers will pay an additional $50 for a three year renewal. Licensed and certified social workers will pay an additional $25 for a three year renewal.

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

(9) TIERING: Is tiering applied? Yes. The regulation establishes different fees for different levels of licensure.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.080(1)(d), KRS 335.090(1)(d), 335.100(1)(c), 335.080(1)(g), 335.090(1)(g), 335.100(1)(f), and 335.130(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. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Social Work
(Amendment)

201 KAR 23:050. Renewal, termination [~~of license~~], reinstatement of license.

RELATES TO: KRS 335.010-335.160, 335.990

STATUTORY AUTHORITY: KRS 335.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation clarifies the provisions of terminating the licenses of individuals who have failed to renew their licenses and sets forth the standard for reinstating an individual whose license has been terminated.

Section 1. (1)(a) Every licensee or certificate holder is required to renew their license or certificate on a three (3) year basis in order to continue to practice social work in Kentucky.

(b) The three year renewal cycle be calculated based on the date of the issuance of the initial license or certificate.

(2) A Renewal Form must be submitted with the appropriate fee and continuing education requirements as codified in 201 KAR 23:075.

(3) Every person licensed by the board shall file his proper and current mailing address with the board and shall immediately notify the board of any and all changes of the mailing address. [~~A licensee may, within sixty (60) days following the dated expiration of his license, submit the required fees as set forth in KRS 335.130 and renewal application and have his license renewed.~~]

Section 2. [~~A licensee may continue to practice for sixty (60) days after the expiration of his license.~~] Should a licensee reapply after the date of expiration [~~sixty (60) days~~] and before six (6) months, he shall pay a penalty of fifty (50) dollars.] Should a licensee reapply after six (6) months and before twelve (12) months, he shall pay a penalty of $100. Should a licensee reapply after twelve (12) months and before the end of eighteen (18) months he shall pay a penalty of $200.

Section 3. Any licensee who shall not have renewed his license at the end of eighteen (18) months must submit a new application in accordance with existing requirements.

Section 4. Upon payment of penalty and payment of the renewal of license and/or certificate(s), the date of the license and/or certificate(s) shall be retroactive to the date of the immediately prior license and/or certificate(s) expired.

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

(a) "LCSW Application For Renewal", 10/2010;

(b) "CSW Application For Renewal", 10/2010; and

(c) "LSW Application For Renewal", 10/2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON SANDERS, Chair

APPROVED BY AGENCY: October 4, 2010

FILED WITH LRC: October 6, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2010 at 1 p.m., local time, at the Kentucky Board of Social Work, 44 Fountain Place, 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. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the pro-

posed administrative regulation. Written comments shall be accepted until November 30, 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: Margaret Hazlette, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Margaret Hazlette, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes renewal requirements.

(b) The necessity of this administrative regulation: This administrative is necessary to set the requirements for continuing education for licensure renewal

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.130(4) allows the board to require establish renewal requirements by promulgation of an administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the licensees of the continuing education requirements established by the board.

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

(a) How the amendment will change this existing administrative regulation: Licensees expiration dates will remain the same; however, they will no longer have the sixty (60) days in which to comply with their expiration date.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for licensees to comply with the KRS 335 and to meet the requirements of federal laws.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335:130 requires that each certified social worker, licensed social worker, and licensed clinical social worker renew his license every three (3) as established by the promulgation of an administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation informs the applications of renewal dates and penalty fees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,000 persons are licensed by the Kentucky Board of Social Work.

(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: No impact as the licensees expiration dates will not change.

(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 actions will have to be taken by licensees as the licensee must currently renew every three (3) years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will be compliant with KRS Chapter 335.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees and applicants.

(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 does not directly establish or increase 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 establish or increase fees.

(9) TIERING: Is tiering applied? No. The mandate established by this administrative regulation is required of all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.080(1)(d), 335.090(1)(d), 335.100(1)(c), 335.080(1)(g), 335.090(1)(g), 335.100(1)(f), and 335.130(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. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Social Work
(Amendment)

201 KAR 23:070. Qualifying education and qualifying experience under supervision.

RELATES TO: KRS 335.010, 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

STATUTORY AUTHORITY: KRS 335.070(3), 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.080(1)(c) and 335.100(1)(a) require an applicant for a certified social worker license or a licensed clinical social worker license to have a master's degree or a doctoral degree in social work from an educational institution approved by the board. KRS 335.080(3) allows a certified social worker to engage in the practice of clinical social work under the supervision of a licensed clinical social worker as directed by the board by promulgation of an administrative regulation. KRS 335.100(1)(b) requires an applicant for a licensed clinical social worker license to have acquired post-master's experience under appropriate supervision as established by the board by promulgation of an administrative regulation. KRS 335.100(3) requires a licensed clinical social worker to assume responsibility for and supervise the certified social worker's practice of clinical social work as directed by the board by promulgation of an administrative regulation. This administrative regulation establishes the educational institutions approved by the board, the definitions relating to supervision, the content of a Contract for Clinical Social Work Supervision, and the requirements for experience under

supervision.

Section 1. Definitions. (1) "Educational institution approved by the board" means a graduate school of social work accredited by the Council on Social Work Education.

(2) "Practice of clinical social work" means the practice of social work that focuses on the evaluation, diagnosis, and treatment of an emotional disorder and mental illness as related to the total health of the individual and that meets the requirements of Section 2 of this administrative regulation.

(3) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at enhancing the professional development of the supervisee in providing clinical social work services.

(4) "Supervisor of record" means the supervisor who assumes responsibility for the practice of a certified social worker pursuant to KRS 335.080(3) and 335.100(3).

Section 2. Practice of Clinical Social Work. (1) The practice of clinical social work shall be based on knowledge of psychodynamics, human relations, crisis intervention, psychopathology, and group dynamics.

(2) A practitioner of clinical social work shall:

(a) Possess numerous skills, including skills necessary for:

1. Individual, marital, family, and group psychotherapy; and

2. Other treatment modalities;

(b) Establish a therapeutic relationship with his client that:

1. Leads to correction of the dysfunction;

2. Includes:

a. Diagnosis using professionally recognized clinical nomenclature, treatment planning that includes development, implementation, and modification of the plan;

b. Evaluation of progress; and

c. Termination of the treatment process; and

3. Is characterized by face-to-face contact with the client throughout the treatment process.

Section 3. Supervision. (1) A supervisor shall be a licensed clinical social worker who:

(a) Provides supervision to a certified social worker pursuant to KRS 335.080(3) and 335.100(3);

(b) Does not have:

1. An unresolved citation filed against him by the board;

2. A suspended or probated license; or

3. A previous or existing personal relationship with a supervisee; and

(c) Has:

1. Been in the practice of clinical social work for three (3) years following licensure as a licensed clinical social worker; and

2. [~~By August 1, 2001,~~] Completed a board-approved three (3) hour training course on supervisory practices and methods for licensed clinical social workers relating to the requirements in KRS Chapter 335 and this administrative regulation.

(2) Supervisory experience obtained in Kentucky with a supervisor who has not completed the course required by (1)(c)2 of this section shall not be approved by the board. This course must be completed every licensure period to maintain supervisory status with the board.

(3) A licensed clinical social worker shall not serve as a supervisor of record for more than six (6) certified social workers with whom he has a contract to be held accountable to the board at the same time.

(4) An applicant receiving supervision outside of Kentucky shall demonstrate that his or her supervisor has been in the practice of clinical social work for a period of three (3) years following licensure as a clinical social worker or its equivalent effective at the time of the supervision.

(5) To be recognized as a supervisor, a licensed clinical social worker who meets the requirements of this section shall submit a written request to become a supervisor in Kentucky along with a copy of the supervisory training certificate.

Section 4. Contract for Clinical Social Work Supervision. The Contract for Clinical Social Work Supervision required by KRS 335.080(3) and 335.100(3) shall contain:

(1) The name and license number of the supervisee;

(2) The name and license number of the supervisor of record;

(3) The name and license number of other supervisors;

(4) The agency, institution, or organization where the experience will be received;

(5) A detailed description of the nature of the practice including the type of:

(a) Clients which shall be seen;

(b) Therapies and treatment modalities which shall be used including the prospective length of treatment; and

(c) Problems which shall be treated;

(6) The nature, duration, and frequency of the supervision, including the:

(a) Number of hours of supervision per week;

(b) Amount of group and individual supervision; and

(c) Methodology for transmission of case information;

(7) The conditions or procedures for termination of the supervision;

(8) A statement that:

(a) The supervisor of record understands that he shall be held accountable to the board for the care given to the supervisee's clients;

(b) The certified social worker is an employee of an agency, institution, or organization, and has Social Security and income tax deducted from his salary; and

(c) The supervisor of record and other supervisors meet the criteria established in Section 3(1), (2), and (3) of this administrative regulation.

(9) An individualized job description that:

(a) Describes in detail how the requirements of Sections 6 and 7 of this administrative regulation shall be met; and

(b) Is on office or agency letterhead and is signed by the executive director, the agency director, or the individual who heads the office.

(10) Each supervisor shall attach a cop7y of the supervisory training certificate to the contract for clinical social work supervision.

Section 5. Notice to Client. If an employee is practicing under the supervision of a licensed clinical social worker, the employee shall notify in writing each client during the period of the supervision. The notification shall contain:

(1) The name, office address, telephone number, and license number of the supervisor of record; and

(2) A statement that the employee is licensed by the board.

Section 6. Experience Under Supervision. Experience under supervision shall consist of:

(1) At least sixty (60) percent of the required experience in a direct client-professional relationship;

(2) Direct responsibility for a specific individual or group of clients; and

(3) Broad exposure and opportunity for skill development with a variety of dysfunctions, diagnoses, acuity levels, and population groups.

Section 7. Supervision Requirements. (1) Supervision shall relate specifically to the qualifying experience and shall focus on:

(a) The accurate diagnosis of a client problem leading to proficiency in applying professionally recognized clinical nomenclature;

(b) The development and modification of the treatment plan;

(c) The development of treatment skills suitable to each phase of the therapeutic process;

(d) Ethical problems in the practice of clinical social work; and

(e) The development and use of the professional self in the therapeutic process.

(2) Supervision shall total a minimum of 200 hours, which shall include individual supervision of not less than two (2) hours during every two (2) weeks of clinical social work practice. More than 100 hours shall not be obtained through group supervision in groups of six (6) or fewer members.

(3) Documentation that establishes that an individual has been licensed in another jurisdiction at the clinical level and has been engaged in the active practice of clinical social work in that jurisdic-

tion for five (5) years immediately preceding the filing of an application with the board meets the requirement for supervision set forth in this administrative regulation.

Section 8. Evaluation by Board. (1) The period of supervised experience required by KRS 335.100(1)(b) shall be evaluated by the board according to one (1) of the following methods:

(a) Postexperience evaluation. A candidate whose experience was obtained while employed at an agency exempted under KRS 335.010(3), (4) or (5) or while licensed in another state shall submit his application along with appropriate documentation of supervision upon completion of the experience.

(b) Transitional evaluation. A candidate who has accumulated an amount less than the full amount of qualifying experience while employed at an agency exempted under KRS 335.010 (3), (4) or (5) or while licensed in another state, and who is seeking to obtain the remainder of his experience in nonexempt employment, shall submit his application along with appropriate documentation of supervision completed to the date of his application. He shall also submit with his application a contract under paragraph (c) of this subsection for the remainder of the experience.

(c) Preapproved evaluation. Candidates not otherwise exempted under KRS 335.010(3), (4) or (5) shall submit a contract for the experience which will be taking place over the required time period and have the contract approved by the board prior to beginning supervision. This contract shall be evaluated by the board and shall be approved or disapproved within ninety (90) days of its submission.

(2) A certified social worker who desires to practice clinical social work that does not qualify as supervised experience pursuant to KRS 335.100(1)(b), shall submit a contract pursuant to KRS 335.080(3). This contract shall be evaluated by the board and shall be approved or disapproved within ninety (90) days of its submission.

Section 9. (1) Changes to that portion of the Contract for Clinical Social Work Supervision describes the nature of the practice and experience that the supervisee is to obtain as required by Section 4(5) of this administrative regulation shall be submitted to the board for approval.

(2) If the supervisee changes his supervisor of record, a new Contract for Clinical Social Work Supervision shall be submitted to the board for approval.

(3) A supervisee shall notify the board by letter of changes of supervisors who are not the supervisor of record, but who are identified in the Contract for Clinical Social Work Supervision pursuant to Section 4(3) of this administrative regulation, and attach a copy of the supervisors supervisory training certificate.

Section 10. Incorporation by Reference. (1) Contract for Clinical Social Work Supervision, 10/2010[~~7/2000~~] is incorporated by reference.

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

SHARON SANDERS, Chair

APPROVED BY AGENCY: October 4, 2010

FILED WITH LRC: October 6, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2010 at 1 p.m., local time, at the Kentucky Board of Social Work, 44 Fountain Place, 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. 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 November 30, 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: Margaret Hazlette, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Margaret Hazlette, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifying education and qualifying experience under supervision for licensure.

(b) The necessity of this administrative regulation: This administrative is necessary to set the requirements for education and supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.080(1)(c) and 335.100(1)(a) require an applicant for a certified social worker license or a licensed clinical social worker license to have a master's degree or a doctoral degree in social work from an educational institution approved by the board. KRS 335.080(3) requires a certified social worker may engage in the practice of clinical social work under the supervision of a licensed clinical social worker as directed by the board by promulgation of an administrative regulation. KRS 335.100(1)(b) provides that an applicant for a licensed clinical social worker license to have acquired post-master's experience under appropriate supervision as established by the board by promulgation of an administrative regulation. KRS 335.100(3) provides that a licensed clinical social worker shall assume responsibility for and supervise the certified social worker's practice of clinical social work as directed by the board by promulgation of an administrative regulation. This administrative regulation is necessary to establish the educational institutions approved by the board, the definitions relating to supervision, the content of a supervisory contract, and the requirements of experience under supervision.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the education and supervision requirements established by the board.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes that the three (3) hour training course on supervisory practices and methods for licensed clinical social workers must relate to Kentucky Law. The amendment also specifies that this course must be completed every licensure period to maintain supervisory status with the board.

(b) The necessity of the amendment to this administrative regulation: This administrative is necessary to identify the requirements to be a supervisor.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.080(3) requires a certified social worker may engage in the practice of clinical social work under the supervision of a licensed clinical social worker as directed by the board by promulgation of an administrative regulation. KRS 335.100(1)(b) provides that an applicant for a licensed clinical social worker license to have acquired post-master's experience under appropriate supervision as established by the board by promulgation of an administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation informs the supervisors and supervisees of the requirements for supervision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1,000 certified social workers are under supervision.

(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 regu-

lation or amendment: This amendment requires that supervisors shall take a course on supervision that is specific to the laws governing supervision in Kentucky, and that they shall take the course every renewal period or three years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for a supervision course is established by the provider. Typically, the cost of these courses does not exceed two hundred dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Supervisors will be familiar with the requirements for supervision in Kentucky.

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

(a) Initially: The board estimates that no additional costs will be incurred by this amendment.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees and applicants

(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 established any fees or directly or indirectly increased any fees: This administrative regulation amendment does not directly establish or increase fees.

(9) TIERING: Is tiering applied? No. The mandate established by this administrative regulation is required of all supervisors.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.070(3), 335.080(1)(c), (3), 335.100(1)(a), (b), (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. None

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Social Work
(Amendment)

201 KAR 23:075. Continuing education.

RELATES TO: KRS 335.130(4)

STATUTORY AUTHORITY: KRS 335.070(3), (6), 335.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation delineates 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 social work course, at the graduate level:

(a) Designated by a social work title or content; or

(b) An academic course, at the graduate level, relevant to social work.

(2) "Approved" means recognized by the Kentucky Board of Social Work.

(3) "Continuing education hour" means fifty (50) clock minutes of participation in continuing educational programs.

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

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

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

(5) "Provider" means a person or an organization approved by the Kentucky Board of Social Work to provide a single continuing education program.

(6) "Relevant" means having content applicable to the practice of social work.

(7) "Sponsor" means a person or an organization approved by the Kentucky Board of Social Work to provide more than one (1) continuing education program over the course of a year,

Section 2. Accrual and Computation of Continuing Education Hours. (1) A minimum of thirty (30) continuing education hours shall be accrued by each licensed clinical social worker and certified social worker holding licensure during the three (3) year period for renewal.

(2) A minimum of fifteen (15) continuing education hours shall be accrued by each licensed social worker holding licensure during the three (3) year period for renewal.

(3) All continuing education hours shall be in or relevant to the licensee's level of licensure.

(4) Three (3) continuing education hours during each renewal period shall be acquired in the area of the social work code of ethics as established in 201 KAR 23:080.

(5) Every third renewal period, two (2) of the continuing education hours shall be on HIV/AIDS courses approved by the Cabinet for Health and Family Services pursuant to KRS 214.610.

(6) Licensed clinical social workers who are board approved supervisors pursuant to 201 KAR 23: 070, Section 3(1)(c)2, shall be required to complete a board approved supervision course every licensure renewal period.

(7) Every third renewal period, two (2) of the continuing education hours shall be on HIV/AIDS courses approved by the Cabinet for Health and Family Services pursuant to KRS 214.610.

(8) Three (3) continuing education hours shall be completed in the area of domestic violence related training courses pursuant to KRS 194A.540.

(9) One and one-half (1.5) hours of continuing education shall be completed one (1) time every six (6) years in the area of the recognition and prevention of pediatric abusive head trauma pursuant to HB 285.

(10) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

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 the licensee. The hours may be earned by completing any of the following education programs:

(1) Programs not requiring board review and approval. Except for courses on ethics which are provided to meet the requirements of Section 2(4) of this administrative regulation and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2, an educational program from any of the following providers shall be deemed

to be relevant to the practice of social work and shall be approved without further review by the board if it is:

(a) Sponsored or approved by:

1. The National Association of Social Workers or any of its affiliated state chapters; or

2. The Association of Social Work Boards.

(b) Sponsored by:

1. The National Federation of Clinical Social Workers or any of its affiliated state chapters;

2. The American Psychological Association or any of its affiliated state chapters;

3. The American Counseling Association or any of its affiliated state chapters;

4. The National Board for Certified Counselors or any of its affiliated state chapters; and

5. The American Psychiatric Association or any of its affiliated state chapters.

6. Colleges of Social Work in Kentucky which are accredited by the Council on Social Work Education.

(c) An academic course offered by an accredited postsecondary institution directly related to social work, counseling, or psychology.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved by the board.

(a) Relevant programs, including home study, distance learning or teleconference courses, and in-service training provided by other organizations, educational institutions, or other service providers approved by the board.

1. Board approval for home study, distance learning and teleconference courses shall be obtained each year unless the program does not require board approval under subsection (1) of this section.

2. The combined total number of hours for home study, distance learning or teleconference courses shall not exceed one-half (1/2) of the individual's continuing education hours.

3. Courses on the board's code of ethics which are taken to meet the requirements of Section 2(4) of this administrative regulation and courses for supervision under 201 KAR 23:070, Section 3(1)(c)2, shall be attended in person before a live presenter, and shall not be taken through home study, distance learning or teleconference courses.

(b) Relevant programs or academic courses presented by the licensee. A presenter of relevant programs or academic courses 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.

(c) Authoring an article in a relevant, professionally recognized or juried publication. Credit shall not be granted unless an article was published within the one (1) year period immediately preceding the renewal date. A licensee shall not earn more than one-half (1/2) of the continuing education hours required for renewal under the provisions of this subsection. More than one (1) publication shall not be counted during each renewal period.

(d) Courses on ethics required by Section 2(4) of this administrative regulation shall be submitted to the board for approval and shall not be automatically approved under Section 3(1) of this administrative regulation.

Section 4. Procedures for Approval of Continuing Education Providers and Programs. A program, which is offered by a provider, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:

(1) A published course outline or similar description which includes an explanation of the course objectives;

(2) Names and qualifications of the instructors presented in the form of curriculum vitas or resumes;

(3) Copies of the evaluation sheet or instrument by which the attendees can comment on the program, and the program agenda indicating hours of education, including all breaks;

(4) Number of continuing education hours requested and a statement whether the provider is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation;

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

(6) A completed Provider[~~Application for continuing education credits approval submitted on the~~] Application for Continuing Education Credit Approval form.

(7)(a) The board may approve a specific continuing education program if the provider of the program:

1. Files a written request for approval;

2. Pays an application fee of $100 for each one day program of eight (8) hours or less; and

3. Provides information about each continuing education program that it proposes to present which meets the requirements established in subsections (1) through (6) of this section.

(b) The approval of a program pursuant to this section shall permit the provider to offer the program for one (1) year.

(c) The provider shall submit a request for renewal and a fifty (50) dollar renewal fee for each subsequent request to offer the same approved program.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any sponsor seeking to obtain approval of a continuing education program prior to its offering shall:

(a) 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(1) through (6) of this administrative regulation.

(b) Provide proof to the board that the sponsor 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 any licensee from its programs.

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

(a) Is relevant to the practice of social work;

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

(c) Has competent instructors with appropriate academic training, professional license or certification, or professionally recognized experience.

(3) The sponsor shall specify whether it is requesting course approval to meet the requirements of Section 2(4) of this administrative regulation.

(4)(a) The board may approve an organization that is not listed in Section 3(1) of this administrative regulation as a sponsor of continuing education for a twelve (12) month period if the organization:

1. Files a written request for approval by submitting the Sponsorship Application for Continuing Education Credit Approval form;

2. Pays an initial application fee of $250;

3. Proposes to sponsor continuing education programs that meet the requirements established in Section 3 of this administrative regulation; and

4. The board shall periodically review the programs that a sponsor has provided to determine if the sponsor continues to meet the requirements of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval for subsequent years by filing a 150 renewal fee annually and notifying the board that the original information required in this section remains current.

Section 6. (1) A licensee or a certificate holder may request an individual review of a continuing education program that was otherwise not approved if it was completed during the appropriate time period if the individual has:

(a) Made a timely request by applying for individual review by submitting the Individual Application for Continuing Education Cre-

dit Approval form; and

(b) Paid a fee of ten (10) dollars.

(2) The review shall be based on the standards for continuing education established by this administrative regulation.

(3) Approval by the board of a continuing education program under this section shall:

(a) Qualify as if it has been obtained from an approved provider; and

(b) Be limited to the particular offering upon which the request for individual review is based.

Section 7. Responsibilities and Reporting Requirements of Licensees. Each licensee shall be responsible for obtaining required continuing education hours. The licensee shall identify his or her own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding licensure shall:

(1) Select approved programs by which to earn continuing education hours;

(2) Submit to the board, when applicable, a request for continuing education programs requiring approval by the board as established in Section 4 of this administrative regulation;

(3) Maintain the licensee's own records of continuing education hours;

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

(5) Furnish documentation of attendance and participation in the appropriate number of continuing education hours at the time of his or her renewal, as follows:

(a) Each person holding licensure shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours;

(b) In each calendar year, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period;

(c) Verification of continuing education hours shall not otherwise be reported to the board;

(d) [~~Documentation sent in to the board prior to renewal shall be returned to the licensee by regular mail;~~

~~(e)~~] Documentation shall take the form of official documents including:

1. Transcripts;
2. Certificates;
3. Affidavits signed by instructors; or
4. Receipts for fees paid to the sponsor; and

(e)[~~(f)~~] Each licensee shall retain copies of his or her documentation.

Section 8. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) Providers of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 7(5) of this administrative regulation, directly to the licensee.

(2) Sponsors 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.

Section 9. Board to Approve Continuing Education Hours; Appeal when Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, a licensee or a provider shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 10. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding licensure and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar 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 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) hours of continuing education within the thirty-six (36) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) The person may request, and the board, at its discretion, may reinstate the licensure, with the provision that the person shall receive thirty (30) hours of continuing education within six (6) months of the date on which the 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.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Provider Application for Continuing Education Credit Approval", 10/2010;

(b) "Sponsorship Application for Continuing Education Credit Approval", 10/2010,

(c) "Individual Application for Continuing Education Credit Approval", 10/2010[~~6/02, Kentucky Board of Social Work, is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Licensure for Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON SANDERS, Chair

APPROVED BY AGENCY: October 4, 2010

FILED WITH LRC: October 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2010 at 1 p.m., local time, at the Kentucky Board of Social Work, 44 Fountain Place, 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. 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 November 30, 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: Margaret Hazlette, Executive Director, Kentucky Board of Social Work, 44 Fountain Place, Frankfort, Kentucky 40601, phone (502) 564-2350, fax (502) 696-8030.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Margaret Hazlette, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements.

(b) The necessity of this administrative regulation: This admin-

istrative is necessary to set the requirements for continuing education for licensure renewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the licensees of the continuing education requirements established by the board.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes continuing education requirements related to HIV/Aids, domestic violence, and pediatric abusive head trauma, as well as the academic credit equivalency.

(b) The necessity of the amendment to this administrative regulation: This administrative is necessary to identify the requirements for continuing education for licensure renewal.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.130(4) allows the board to require continuing education as a condition of license renewal. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation informs licensees of the board's requirements for continuing education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5,000 persons are licensed by the board.

(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: This amendment requires the courses that licensees shall take for renewal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost for a continuing education courses vary and are established by the provider. Licensees must meet the requirements in order to renew their licenses every three years.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Continuing education help keep licensees informed of current practice.

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

(a) Initially: The board estimates that no additional costs will be incurred by this amendment.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by the licensees and applicants.

(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 established any fees or directly or indirectly increased any fees: This administrative regulation amendment does not directly establish or increase fees.

(9) TIERING: Is tiering applied? No. The mandate established by this administrative regulation is required of all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.070(3), (6), and 335.130.

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? 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:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60

(4) "Waterfowl" is defined in KRS 150.010(40).

Section 2. (1) Except as authorized by 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are established in 301 KAR 2:224.

Section 3. Season dates. (1) Duck, coot, and merganser:

(a) Beginning on Thanksgiving Day for four (4) consecutive days; and

(b) For fifty-six (56) consecutive days ending on the last Sunday in January of the following year.

(2) Canada goose:

(a) Eastern, Pennyrile, and Western Goose Zones, beginning on November 23 for seventy (70) consecutive days.

(b) Northeast Goose Zone;

1. Beginning on the last Saturday in December [~~following Christmas~~] for nine (9) consecutive days; and

2. [~~Beginning on~~] January 19 through January 31 [~~for thirteen (13) consecutive days~~].

(3) White-fronted and brant geese, beginning on November 23 for seventy (70) consecutive days.

(4) Light goose:

(a) Beginning on November 23 for seventy (70) consecutive days; and

(b) Light Goose Conservation Order season:

1. Western Duck Zone: from February 1 through March 31, except:

a. The season shall be closed during the first full week in February; and

b. Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226 [~~5 and February 8 through March 31~~].

2. Eastern Duck Zone from February 1 through March 31.

(5) A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. In the Ballard Reporting Area that is established in 301 KAR 2:224:

(1) A person hunting waterfowl shall:

(a) Hunt from a blind unless hunting in flooded, standing timber;

(b) Not hunt from or establish a blind:

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line; and

(c) Not possess more than one (1) shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in 301 KAR 2:221, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks: The daily limit shall be six (6), that shall not include more than:

(a) Four (4) mallards;

(b) Two (2) hen mallards [~~One (1) hen mallard~~];

(c) Three (3) wood ducks;

(d) One (1) black duck;

(e) Two (2) redheads;

(f) Two (2) pintails[~~One (1) pintail~~];

(g) Two (2) scaup;

(h) One (1) mottled duck; or

(i) One (1) canvasback.

(2) Coot: Daily limit fifteen (15).

(3) Merganser: Daily limit five (5), which shall not include more than two (2) hooded mergansers.

(4) Dark goose: Daily limit six (6), that shall not include more than:

(a) Two (2) Canada geese;

(b) Two (2) white-fronted geese; or

(c) Two (2) brants.

(5) Light goose: Daily limit twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.

(6) The possession limit shall be double the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) 2 p.m. in the Northeast Goose Zone during a Canada goose season;

(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222; or

(3) One-half (1/2) hour after sunset if hunting light goose during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) Season dates:

(a) Light goose: November 5 through January 31;

(b) Light Goose Conservation Order season:

1. Western Duck Zone: from February 1 through March 31, except:

a. The season shall be closed during the first full weekend in February; and

b. Youth hunters may hunt during the first full weekend in February pursuant to 301 KAR 2:226[~~; February 5 and February 8 through March 31~~].

2. Remainder of state: from February 1 through March 31; and

(c) Other waterfowl: November 5 through January 31.

(2) Daily limit: three (3) waterfowl, except that there shall not be a limit on light goose during the Light Goose Conservation Order season.

(3) Possession limit: six (6) waterfowl, except that there shall not be a possession limit on light goose during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light goose during the Light Goose Conservation Order season shall first obtain a free permit from the department by contacting the Ballard WMA office.

(2) A person hunting light goose during the Light Goose Conservation Order season shall submit a Light Goose Conservation Order report to the department by April 10.

BENJY KINMAN, Deputy Commissioner

For DR. JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 13, 2010.

FILED WITH LRC: October 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2010, at 2 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by November 30, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2010–11 waterfowl hunting seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates and bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing waterfowl hunting seasons and area-specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with national and international management goals

(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: Each fall the USFWS issues a federal mandate establishing the framework for waterfowl hunting seasons. This amendment reflects the federal mandate regulations for waterfowl hunting under guidance of the Migratory Bird Treaty Act. Federal frameworks permit a maximum 60-day season in the Mississippi Flyway. Kentucky will split duck season in 2010, using four days to accommodate hunters during the Thanksgiving weekend with the remaining 56 days open through the last Sunday in January as specified in the federal frameworks. In 2010, the bag limits on hen mallards and pintails will be two (2) birds per day for the entire duck season.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal mandate from the USFWS and continue efforts to increase quality hunting opportunity for waterfowl and migratory game birds.

(c) How does the amendment conform to 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 that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity to hunt waterfowl in the state.

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

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for 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. It will not be necessary to increase any other fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations to restrict the methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. States must adhere to 50 C.F.R. Parts 20 and 21 that establishes the U.S. Fish and Wildlife Service's Federal migratory bird hunting frameworks.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory limits that a state may permit. States are permitted to be more restrictive but not more liberal in their respective regulations. State waterfowl population migration and winter management objectives necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's waterfowl hunters. The season on snow geese is shorter than the federal framework because migration patterns for this species result in a paucity of birds early in the federal framework. The Canada goose season in the Northeast Goose Zone is shorter than is permitted in the rest of the state because of the desire to maintain a huntable population in that region of the state.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:222. Waterfowl hunting requirements on public lands.

RELATES TO: KRS 150.010(40), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Blind" means a:

(a) Concealed enclosure;

(b) Pit; or

(c) Boat.

(2) [~~"Blind site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.~~

~~(3)~~] "Department blind" means a permanently fixed blind structure built by the department.

(3) "Hunt site" means a specific location where waterfowl hunting is allowed, as approved by the department or the U.S. Army Corps of Engineers.

(4) "Layout blind" means a portable blind that when fully deployed allows one (1) person to be concealed above the surface of the ground.

(5) "Party" means:

(a) A person hunting alone; or

(b) Two (2) to four (4) people who share a department blind or hunt[~~blind~~] site.

(6) "Permanent blind" means a blind left in place by a waterfowl hunter longer than twenty-four (24) hours.

(7) "Regular waterfowl season" means the open waterfowl season that does not include the Light Goose Conservation Order or [~~for~~] the September wood duck, teal, and Canada goose seasons as established in 301 KAR 2:221 and 2:225.

(8) "Waterfowl" is defined in KRS 150.010(40).

(9) "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) that has "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. Shot requirements. A person hunting waterfowl shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 3. (1) Except as specified in this section or in Section 4[~~5~~] of this administrative regulation, on a Wildlife Management Area:

(a) A person hunting waterfowl shall not:

1. Establish or hunt from a permanent waterfowl blind;

2. Hunt within 200 yards of:

a. Another occupied hunt site;

b. Another legal waterfowl hunting party; or

c. An area closed to waterfowl hunting[~~:~~

~~1. A permanent waterfowl blind; or~~

~~2. A waterfowl blind within 200 yards of:~~

~~a. Another waterfowl blind; or~~

~~b. A waterfowl refuge~~];

(b) A person shall not hunt in a designated recreation area or access point;

(c) More than four (4) persons shall not occupy a waterfowl blind or hunt site; and

(d) A hunter shall remove decoys and personal items daily, except that a hunter drawn for a multiday hunt may choose to leave decoys in place for the duration of the hunt.

(2) A person wanting to establish or use a permanent waterfowl blind or hunt[~~blind~~] site on Lake Barkley, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Sloughs, or Doug Travis Wildlife Management Areas:

(a) Shall first obtain a waterfowl blind permit from the U.S. Army Corps of Engineers or the department;

(b) May designate one (1) other person as a partner; and

(c) Shall not hold more than one (1) permit per area.

(3) A person who participates in a drawing for a hunt site[~~WMA blind~~] permit shall:

(a) Be at least eighteen (18) years of age; and

(b) Possess:

1. A valid Kentucky hunting license;

2. A Kentucky waterfowl permit; and

3. A federal duck stamp.

(4) The holder of a hunt site [~~waterfowl blind~~] permit shall:

(a) Construct or establish the blind or hunt [~~blind~~] site before November 20 or forfeit the permit;

(b) Not lock a waterfowl blind; and

(c) Remove the blind and blind materials within thirty (30) days after the close of the regular waterfowl season or be ineligible for a permit the following year, unless an extension of time is granted by the department based on weather or water level conflicts.

(5) A permanent blind, department blind, or blind site not occupied by the permit holder one (1) hour before sunrise shall be available to another hunter on a first-come, first-served basis.

(6) A waterfowl blind restriction established in this section shall not apply to a falconer if a gun or archery season is not open.

Section 4. Wildlife Management Area Requirements. (1) The regular waterfowl season provisions shall apply, as established in 301 KAR 2:221, except as established in this section.

(2) The provisions of this section shall not apply to a waterfowl hunting season that opens prior to October 15, as established in 301 KAR 2:225.

(3) A person shall not:

(a) Hunt on an area marked by a sign as closed to hunting;

(b) Enter an area marked by signs as closed to public access; or

(c) Hunt a species on an area marked by signs as closed to hunting for that species.

(4) On Wildlife Management Areas in Ballard County:

(a) The shotgun shell possession limit shall be fifteen (15), except that the shotgun shell possession limit shall be twenty-five (25) if:

1. The daily bag limit for ducks is greater than three (3); and

2. The daily bag limit for Canada goose is greater than or equal to two (2);

(b) At least one (1) person in a waterfowl blind shall be eighteen (18) years of age or older if hunting in a department waterfowl blind or hunt site at Ballard or Boatwright WMA.

(5) At Ballard WMA:

(a) The duck, coot, and merganser season shall be December 8[~~9~~] through January 30[~~31~~].

(b) The goose season shall be December 8[~~9~~] through January 30[~~31~~].

(c) Youth waterfowl season shall be the first full weekend in February.

(d) A person hunting waterfowl shall not hunt on Monday, Tuesday, Christmas Day, or New Year's Day.

(e) A person hunting waterfowl shall:

1. Apply for the waterfowl quota hunt as established in Section 6 of this administrative regulation;

2. [~~Case his or her gun if using department-supplied transpor-~~

~~tation to and from a waterfowl blind;~~

~~3.~~] Not hunt waterfowl on the Ohio River from fifty (50) yards upstream of Dam 53 to fifty (50) yards downstream from the southern border of Ballard Wildlife Management Area from October 15 through March 15; and

3.[~~4.~~] Exit the area by 2 p.m. during the regular waterfowl season, except as authorized by the department.

(6) At Boatwright WMA, including the Olmsted, Peal, and Swan Lake units:

(a) A party shall:

1. Not hunt on Monday, Tuesday, Christmas Day, or New Year's Day;

2. Obtain a daily check-in card by 8 a.m. before entering the area from December 8[~~9~~] through January 30[~~31~~].

3. Check out the same day by:

a. Visiting the designated Check station prior to 8 a.m.; or

b. Depositing the check-in card at a department-designated drop point after 8 a.m.

(b) Duck season shall be open one-half (1/2) hour before sunrise to sunset beginning Thanksgiving Day for four (4) consecutive days on areas of Boatwright WMA that are open to hunting.

(c) A department blind or hunt [~~blind~~] site shall be assigned through a daily drawing through January 30[~~31~~].

(d) A department blind or hunt [~~blind~~] site shall be offered to another hunter on a first-come, first-served basis, if the blind or hunt [~~blind~~] site has not been assigned during the daily drawing.

(e) Waterfowl hunters shall exit the area by 2 p.m. during the regular waterfowl season.

(f) A boat blind shall not be permitted in flooded timber, except:

1. During periods of flood if no other access is possible; or

2. A mobility-impaired hunter may hunt from a boat[~~, and the 200 yard minimum distance restriction, as established in this section, shall not apply to a person assisting a mobility-impaired hunter~~].

(g) A party shall only hunt waterfowl:

1. From a department blind; or

2. From layout blinds set so that all layout blinds in the party lie within a twenty-five (25) foot radius from the center of the party, and within 200 yards of a hunt [~~blind~~] site in December and January during the regular waterfowl season.

(h) On the Peal unit:

1. More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

2. More than four (4) parties shall not hunt at the same time on Fish Lake;

3. More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

4. A party shall not hunt waterfowl except within twenty-five (25) feet of a hunt [~~blind~~] site during December and January.

(i) On the Swan Lake Unit:

1. A person shall not hunt waterfowl from November 25[~~26~~] through December 5[~~6~~];

2. The area open to hunting during the regular waterfowl season shall be open for the Light Goose Conservation Order season as established in 301 KAR 2:221; and

3. Blind restrictions shall not apply to the Light Goose Conservation Order season.

(7) Lake Barkley WMA.

(a) A permanent blind shall only be established within ten (10) yards of a blind site;

(b) Waterfowl refuge areas:

1. The area west of the Cumberland River channel, as marked by buoys, between river mile fifty-one (51), at Hayes Landing Light, south to the Tennessee Valley Authority's power transmission lines at river mile fifty-five and five-tenths (55.5) shall be closed from November 1 through February 15; and

2. The area within Honker Bay and Fulton Bay, as marked by buoys and signs, shall be closed from November 1 through March 15.

(c) A person shall not hunt from October 15 through March 15:

1. On Duck Island; or

2. Within 200 yards of Duck Island.

(8) Barren River Lake WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of the Peninsula Unit; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(9) Miller Welch-Central Kentucky WMA. A person shall not hunt waterfowl from October 15 through January 14.

(10) Lake Cumberland WMA. The following sections shall be closed to the public from October 15 through March 15:

(a) The Wesley Bend area, bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road; and

(b) The Yellowhole area, bounded by Fishing Creek Road and Hickory Nut Road.

(11) Pioneer Weapons WMA. A person hunting waterfowl:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake; and

(b) Shall not use a breech-loading firearm elsewhere on the area.

(12) Doug Travis WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person hunting waterfowl shall exit the area by 2 p.m. during waterfowl season, except as authorized by the department.

(c) On Black Lake, Fish Lake, Forked Lake, Indian Camp Lake, [~~Fish Lake,~~] Number Four Lake, and Upper Goose [~~Black~~] Lake, all waterfowl hunting after November 1:

1. Shall be from hunt [~~blind~~] sites assigned by a random preseason drawing; and

2. Shall be within ten (10) yards of a hunt [~~blind~~] site, including periods of Mississippi River flooding.

(13) Grayson Lake WMA. A person shall not hunt waterfowl:

(a) Within the no-wake zone at the dam site marina;

(b) From the shore of Camp Webb;

(c) On Deer Creek Fork; and

(d) Within three-quarters (3/4) of a mile from the dam.

(14) Green River Lake WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(15) Kaler Bottoms WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(16) Land Between the Lakes National Recreation Area.

(a) The following portions shall be closed to the public from November 1 through March 15:

1. Long Creek Pond;

2. The eastern one-third (1/3) of Smith Bay, as marked by buoys; and

3. The eastern two-thirds (2/3) of Duncan Bay, as marked by buoys;

(b) The following portions shall be closed to waterfowl hunting:

1. The Environmental Education Center; and

2. Energy Lake.

(c) A person shall possess an annual Land Between the Lakes Hunting Permit if hunting waterfowl:

1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or

2. From a boat on a flooded portion of Land Between the Lakes when the lake level is above elevation 359.

(d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.

(e) A person shall not establish or use a permanent blind:

1. On an inland area; or

2. Along the Kentucky Lake shoreline of Land Between the Lakes.

(f) A person hunting waterfowl shall remove decoys and personal items daily.

(17) Obion Creek WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(18) Ohio River Islands WMA.

(a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to the power line crossing at approximately river mile 911.5.

(b) Stewart Island shall be closed to public access from October 15 through March 15, except for those drawn for a quota deer hunt.

(c) Shooting hours shall be one-half (1/2) hours before sunrise until 2 p.m.

(19) Peabody WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The following areas, as posted by signs, shall be closed to the public from October 15 through March 15:

1. The Sinclair Mine area, bounded by Hwy 176, the haul road, and Goose Lake Road; and

2. The Ken area, bounded by Wysox Road, H2 Road, H1 Road, and H6 Road.

(20) Robinson Forest WMA. The main block of the WMA shall be closed to waterfowl hunting.

(21) Sloughs WMA.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) A person hunting waterfowl shall exit the area by 2 p.m. during the regular waterfowl season.

(c) On the Grassy-Pond Powell's Lake Unit, a person hunting waterfowl:

1. Shall hunt:

a. From a department blind; or

b. From a blind within twenty-five (25) yards of a blind site.

2. Shall remove decoys and personal items from the area on a daily basis.

(d) On the Jenny Hole-Highlands Creek Unit, a person hunting waterfowl

1. Shall hunt:

a. From a department blind;

b. Within twenty-five (25) yards of a hunt [~~From a blind within twenty-five (25) yards of a blind~~] site; or

c. [~~From a blind that is~~] No closer than 200 yards of another hunting party.

2. Shall remove decoys and personal items from the area on a daily basis.

(e) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds; and

2. Shall not hunt closer than 200 yards from another boat.

(f) A person hunting waterfowl on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from a blind assigned by the department through a drawing as established in Section 6 of this administrative regulation;

2. May occupy a permitted blind if not claimed by the permittee within one (1) hour before sunrise;

3. Shall not possess more than fifteen (15) shotgun shells, except that the shotgun shell possession limit shall be twenty-five (25) if:

(a) The daily bag limit for ducks is greater than three (3); and

(b) The daily bag limit for Canada goose is greater than or equal to two (2);

4. Shall be accompanied by an adult if under eighteen (18) years of age; and

5. The waterfowl blind for a mobility-impaired person shall be open to the public if the permit holder or another mobility-impaired person has not claimed the blind on that day by one (1) hour before sunrise.

(g) The Crenshaw and Duncan II tracts of the Sauerheber Unit shall be closed to hunting except for:

1. Waterfowl from November 1 through March 15; and

2. The modern gun deer season.

(h) The remainder of the Sauerheber Unit shall be closed to the public from November 1 through March 15.

(22) South Shore WMA.

(a) The WMA shall be closed to hunting from November 15 through January 15, except for quota waterfowl hunting and dove hunting.

(b) [~~The quota hunt shall require advance application and selection.~~

~~(c)~~] A hunter shall use a department blind.

(c)[~~(d)~~] A department blind shall be allocated by a preseason drawing.

(23) Taylorsville Lake WMA. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(24) Yatesville Lake WMA. The following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

(a) The Greenbrier Creek embayment; and

(b) The lake area north from the mouth of the Greenbrier Creek embayment to the dam, including the island.

(25) Yellowbank WMA. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 5. (1) A person applying to hunt waterfowl on Ballard WMA or the Sauerheber Unit of Sloughs WMA shall:

(a) Apply through the vendor supplied by the department by calling 1-877-598-2401

(b) Apply from September 1 through September 30;

(c) Pay a three (3) dollar application fee for each application; and

(d) Not apply more than one (1) time for each hunt.

(2) A person drawn to hunt may bring up to three (3) additional hunters.

(3) A person shall be declared ineligible to hunt in department waterfowl quota hunts during the remaining portion of the waterfowl season and declared ineligible to apply for any department quota hunt the following year if the hunter violates state or federal regulations while waterfowl hunting on WMAs that have a preseason or daily drawing.

Section 6. State Parks. (1) Waterfowl hunting shall be prohibited, except there shall be an open waterfowl hunt December 13 through January 31 on designated areas of Barren River, Grayson Lake, Greenbo Lake, Lake Barkley, Lincoln Homestead, Nolin Lake, Paintsville Lake, Pennyrile Lake, Rough River Lake, and Yatesville Lake State Parks.

(2) Hunters shall check in each day at the front desk of the state park or a designated check-in location on days that the park office is not open.

(3) During check-in hunters shall be provided a map showing designated areas of the park that are open to waterfowl hunting.

(4) Hunters shall check out each day at the front desk of the state park or a designated check-out location on days that the park office is not open.

(5) Statewide waterfowl hunting requirements shall apply.

Section 7. Youth-Mentor and Mobility-Impaired Waterfowl Hunts. (1) There shall be youth-mentor waterfowl hunts on the Minor Clark and Peter W. Pfeiffer fish hatcheries:

(a) [~~The last Saturday in December;~~

~~(b)~~] The last Sunday in December;

(b)[~~(c)~~] The first Saturday in January;

(c)[~~(d)~~] The first Sunday in January;

(d)[~~(e)~~] The fourth Saturday in January;

(e)[~~(f)~~] The fourth Sunday in January;

(f)[~~(g)~~] The fifth Saturday in January; and

(g)[~~(h)~~] The fifth Sunday in January.

(2) There shall be a mobility-impaired waterfowl hunt at Minor Clark Fish Hatchery that is held concurrently with each youth-mentor hunt.

(3) A youth or mobility-impaired person shall register in advance and carry a department provided postcard notification on the day of the hunt.

(4) A mobility-impaired person shall also submit a mobility-impaired access permit.

(5) Each youth shall be accompanied by an adult who is eighteen (18) years or older.

(6) Each youth shall not be accompanied by more than one (1) adult.

(7) One (1) adult may accompany two (2) youths.

(8) A mobility-impaired hunter may be accompanied by no more than one (1) assistant who may also hunt.

(9) A person shall hunt from an established blind and shall not change blinds.

(10) A blind shall not be used by more than four (4) hunters.

(11) A person shall only discharge a firearm from a blind.

(12) A person shall not possess more than fifteen (15) shot-

shells.

(13) A waterfowl hunter, mentor, or assistant shall immediately retrieve downed birds.

(14) A person shall encase a firearm if traveling to and from a blind.

(15) Hunting shall end at noon, and hunters shall exit the area by 1 p.m.

(16) All decoys and equipment shall be removed at the end of each day's hunt.

(17) A hunter shall report harvest by depositing a completed hunt permit at the designated location.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: August 13, 2010.

FILED WITH LRC: October 15, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2010, at 3 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by November 30, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons, bag limits and requirements on public lands within federal migratory bird hunting frameworks established in 50 C.F.R. Part 20 according to the U.S. Fish and Wildlife Service.

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2010–2011 waterfowl hunting requirements in accordance with the U.S. Fish and Wildlife Service and Kentucky Department of Fish and Wildlife Resources management objectives.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025 authorizes the department to establish hunting season dates, bag limits and other hunting requirements. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing waterfowl hunting seasons and area-specific requirements, this administrative regulation is maintaining and managing waterfowl conservation efforts consistent with state, national and international management goals, and within the statutory authority.

(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: Each fall the U.S. Fish and Wildlife Service issues a federal mandate establishing frameworks for waterfowl hunting seasons in the United States. This amendment reflects the federal mandate regulations for waterfowl hunting within the requirements of the Migratory Bird Treaty Act. This amendment redefines waterfowl hunt sites versus waterfowl blinds on public land, adjusts some hunt dates due to calendar shift, adjusts youth-mentor hunt dates on fish hatchery property, and adjusts hunting procedures and hunting pressure on some properties.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment to this administrative regulation is to implement the federal framework mandates from the U.S. Fish and Wildlife Service and effectively manage public hunting pressure on public lands, conserve the waterfowl resource, and provide adequate public hunting opportunity with minimal area use conflict.

(c) How does the amendment conform to 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 that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendments in season dates and hunting requirements will be published in the fall waterfowl hunting guide and on the department's website. Hunters will have to review the hunting guide or website for the updated information to hunt legally during the specified season.

(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 or amended costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be continued opportunity for quality waterfowl hunting on public areas.

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

(a) Initially: This administrative regulation change will result in no additional cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for 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. It will not be necessary to increase any other fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate administrative regulations to restrict the methods for the taking of wildlife. KRS 150.600 authorizes the department to

regulate the taking of waterfowl on private and public land.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons which are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Part 20, 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the following: earliest opening and latest closing date, maximum number of days a specie(s) is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the maximum frameworks and requirements permitted under the federal regulations. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state stocks of birds important to Kentucky's waterfowl hunters. The greatest wintering and migrating waterfowl concentrations are located on public wetlands managed by KDFWR. KDFWR imposes more restrictive hunting regulations on these lands in effort to meet international waterfowl management objectives while still providing quality hunting opportunity consistent with waterfowl population objectives.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 4:050. Swan Lake Unit of Boatwright Wildlife Management Area[~~restrictions~~]

RELATES TO: KRS 150.010, 150.015[~~, 150.025, 150.300~~], 150.600[~~, 219.370~~]

STATUTORY AUTHORITY: KRS 150.025(1)(g), 150.600(1)[~~13A.350, 150.025~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(g) authorizes the department to make administrative regulations that apply to a limited area or to the entire state. KRS 150.600(1) authorizes the department to establish waterfowl refuges on public or private lands. This administrative regulation establishes area use restrictions for the Swan Lake Unit of Boatwright Wildlife Management Area.[~~This administrative regulation is necessary to prescribe appropriate use restrictions for the Swan Lake Unit of Boatwright Wildlife Management Area. Its function is to minimize disturbance of wintering migratory waterfowl and to provide for the protection and maintenance of the property and its associated wildlife.~~]

Section 1. Restrictions. (1) The Swan Lake Unit of Boatwright Wildlife Management Area shall be closed to all public access from October 15 through March 15, except for:

(a) Authorized personnel from:

1. The department; or

2. The U.S. Fish and Wildlife Service.

(b) Hunters assigned from a daily department quota hunt drawing during the regular waterfowl season, pursuant to 301 KAR 2:222.

(2) A person shall not:

(a) Have an unleashed pet;

(b) Camp except in a designated area;

(c) Camp for more than fourteen (14) consecutive days;

(d) Camp with a recreational vehicle; or

(e) Use a firearm to take frogs.

[~~Section 1. Access. The Swan Lake Unit of Boatwright Wildlife Management Area, except such portions as are designated wildlife observation areas or opened in other administrative regulations, is closed to all public access, including by boat during periods of high water, from October 15 through March 15. Only authorized Department or U.S. Fish and Wildlife Service employees on official business shall enter the premises during this period.~~

~~Section 2. Hunting Restrictions. (1) Wild turkey. Turkey hunting is prohibited during all fall turkey seasons.~~

~~(2) Frogs. Firearms may not be used for hunting frogs.~~

~~(3) Waterfowl hunting is prohibited on the body of water known as Swan Lake.~~

~~Section 3. Dog Training. Dog training is prohibited.~~

~~Section 4. Camping Restrictions. (1) Location. Camping is restricted to designated areas. (2) Length of time. No one shall camp on this management area for more than fourteen (14) consecutive days.~~

~~(3) Pets. All pets in the camping area must be leashed.~~

~~(4) Only primitive camping is permitted. Recreational vehicle camping is prohibited.~~]

BENJY T. KINMAN, Deputy Commissioner,
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: October 12, 2010
FILED WITH LRC: October 13, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2010, at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by November 30, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes special restrictions on public access and use of the Swan Lake Unit of Boatwright Wildlife Management Area (WMA). This WMA is managed with an emphasis on waterfowl conservation.

(b) The necessity of this administrative regulation: This regulation is necessary to provide additional protection for waterfowl species using the area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to make administrative regulations that apply to a limited area, and KRS 150.600 allows the department to establish waterfowl refuges on public lands.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists the department's ability to manage certain species of wildlife by reducing public impact during critical times of the year, which is authorized by statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment will effectively open up the area to early season migratory bird hunting.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to increase public hunting opportunity while still protecting the migratory birds during other critical time periods.

(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: There are approximately 20,000 waterfowl hunters in Kentucky that may be affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will allow the entities in question (3) to participate in early season migratory bird hunting on the Swan Lake Unit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any additional cost to hunters because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Migratory bird hunters will benefit through increased opportunity to hunt.

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

(a) Initially: There will be not be an initial change in cost to the Department.

(b) On a continuing basis: There will not be a change in cost to the Department on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There will not be any direct or indirect increase of fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The same guidelines and limits apply to all migratory bird hunters.

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's Divisions of Wildlife and Law Enforcement will be impacted by this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 50 C.F.R. Parts 20 and 21 establish the migratory bird management frameworks that states must operate within.

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? It is unlikely that this administrative regulation will generate any new revenue during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is unlikely this regulation will generate any new revenue during subsequent years.

(c) How much will it cost to administer this program for the first year? There will not be an additional cost incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will not be an additional cost incurred 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 (+/-): None; see 4 (a) and (b) above.

Expenditures (+/-): None; see 4 (c) and (d) above.

Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Office of the Secretary
Kentucky State Nature Preserves Commission
(Amendment)

400 KAR 2:090. Management, use, and protection of nature preserves.

RELATES TO: KRS 146.410, 146.440

STATUTORY AUTHORITY: KRS 146.465, 146.475, 146.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.485 requires the commission to establish rules for the management, use, and protection of nature preserves. This administrative regulation sets forth rules to be applied to the management and use of all nature preserves, and to fulfill the purposes of KRS 146.440.

Section 1. Applicability. These rules shall apply to all nature preserves unless exceptions are set forth in the articles of dedication. The reasons for any exceptions shall be set forth in the records of the commission.

Section 2. Boundary Markers. (1) Nature preserves boundaries shall be made evident by posting boundary markers in a conspicuous manner, or as approved by the commission.

(2) Boundary fences and barriers may be installed as approved by the commission; such shall not be in a form that will create a detrimental effect on movement of wildlife or other natural objects.

Section 3. Intrusions. There shall be no intrusions of structures, easements, rights-of-way, or land uses which do not conform with these rules and with the purposes and definition of a nature preserve as specified in the Act, except as allowed by the articles of dedication.

Section 4. Emergency Situations. (1) Emergency situations shall be reported immediately to the director by the custodian of the nature preserve.

(2) Emergency situations that require immediate action to prevent injury to persons or damage to property, as determined by the director or the commission, shall be handled in such a manner as to cause minimal damage to natural conditions.

Section 5. Access Lanes. Vehicular access lanes shall be installed and maintained within a nature preserve only where essential for patrol, fire control, or other management or research activities and shall be in accordance with plans approved by the commission. Such lanes shall be closed to all except service vehicles. They shall provide a single track, and clearing shall not extend more than seven (7) feet on each side of the center of the lane. Service vehicles only shall be used on such designated access lanes except in emergency situations.

Section 6. Fire Control. (1) When boundary firebreaks are needed, they shall be constructed in a buffer area outside the nature preserve if possible. Firebreaks within a nature preserve shall be kept to a minimum and shall be constructed only in accordance with plans approved by the commission. Temporary firebreaks, made by mowing, raking, or wetting, may be used in conjunction with a managed burn.

(2) All wildfires shall be brought under control as quickly as possible. After a fire within a nature preserve, there shall be no cleanup, fire hazard reduction, or replanting except with the approval of the commission. Approval shall be based upon health and safety considerations, or the need for restoration.

(3) Prescribed burning may be undertaken as approved by the commission. A written plan shall be prepared for each prescribed burn. Approval may be given if the prescribed burning plan is in compliance with this section. Fire shall be kept away from fences and other structures that may be damaged. Burning shall not be done under conditions more hazardous than specified in the prescribed burn plan. No firefighting chemicals that are known to cause damage to or alteration of natural conditions shall be used. Use of equipment and vehicles shall be specified in the prescribed burn plan. No equipment or vehicles that would cause damage or alteration to the natural features of the nature preserve shall be used.

Section 7. Trails. (1) A trail system shall conform to the objectives of the nature preserve. Trails shall be designed so as to affect only part of the nature preserve and to have minimal impact on natural features. Trails shall be designed to have no significant impact on species of animals or plants monitored by the commission.

(2) Location and form of any trails other than natural wildlife paths shall be approved by the commission. Trails shall be adequate to provide for permitted use of a nature preserve and to prevent erosion, trampling of vegetation, and other deterioration, but otherwise shall be kept to a minimum. Use of paving materials, footbridges, and elevated walks is permissible when provided for in the trail plan approved by the commission. Synthetic materials, painted or chemically treated wood, or stone or earth materials from outside the nature preserve may be used in trail construction only as specified by the commission.

(3) No species of animals or plants monitored by the commission shall be removed, damaged, or altered in trail construction or maintenance.

Section 8. Other Structures and Improvements. Necessary signs, information booths, trash receptacles, and minor structures required to house research instruments or hand tools are permitted within nature preserves if specifically approved by the commission or by permission of the commission for research activities. All other structures and service facilities shall be located in service areas. Signs and structures shall be approved by the commission.

Section 9. Service Areas. Service areas may be established within nature preserves to provide access and parking, management facilities, and visitor facilities. Provision for necessary service areas may be included in the articles of dedication or as approved on a case specific basis by the commission.

Section 10. Scenic and Landscape Management. (1) No measures shall be taken to alter natural growth or features for the purpose of enhancing the beauty, neatness, or amenities of a nature preserve. There shall be no cutting of grass, brush, or other vegetation, thinning of trees, removal of dead wood, opening of scenic vistas, or planting, except as approved by the commission.

(2) Installation of guard rails, fences, steps, and other devices necessary for visitor safety may be approved by the commission. Dead trees or branches that constitute a safety hazard to persons on trails or in other authorized use areas may be felled or cleared.

(3) Except as provided in the articles of dedication or as approved by the commission, there shall be no removal or consumptive use of any material, product, or object from a nature preserve and there shall be no introduction of any material, product, or object to a nature preserve. Prohibited activities include, but are not limited to, grazing by domestic animals; farming; gathering of firewood or other plant products; mining or quarrying; and dumping, burying or spreading of garbage, trash or other materials.

(4) As approved by the commission, artifacts may be removed or demolished as follows:

(a) Old interior fences may be removed, giving consideration to leaving posts to mark boundaries between former land uses;

(b) Rubbish may be removed; and

(c) Structures having no utilitarian, historical, scientific, or habitat value may be demolished or removed.

Section 11. Water Level Control. Natural water levels shall not be altered. Water levels which have been altered by man may be changed if identified as being essential for the maintenance and restoration of natural conditions.

Section 12. Erosion Control. Erosion and soil deposition due to past or present disturbance by man or natural conditions within or outside of a nature preserve may be controlled as approved by the commission.

Section 13. Management of Animals and Plants (1) Control of plant succession.

(a) Control of plant succession by deliberate manipulation may be undertaken if preservation or restoration of a particular vegetation type or preservation of a species of animals or plants monitored by the commission is designated an objective of the nature preserve by the commission.

(b) Plant succession control measures may be undertaken in such a manner as approved by the commission.

(c) Vegetation may be managed within the following limitations:

1. Plant species not native to the site or vicinity may be eliminated by cutting, girdling, grubbing, or basal or spot foliar application of specified herbicide;

2. The time of burning during the year, the frequency of burning, and the fractional amount of the area that may be burned each year shall be specified;

3. Invading native woody species may be eliminated or controlled by cutting, girdling, grubbing, or basal application of specified herbicide.

(d) The use of herbicides may be specified by the commission.

(2) Control of noxious species.

(a) Species of plants and animals which are noxious in fact shall be controlled only if they are determined by the commission to be jeopardizing the natural integrity of the nature preserve.

(b) Except for removal from trails, access lanes, and firebreaks as approved by the commission, there shall be no control of native plants which are not noxious but may otherwise appear undesirable.

(c) There shall be no control of predators, rodents, insects,

snakes, or other animals except as approved by the commission, even though they may appear harmful or undesirable.

(d) There shall be no use of pesticides except as approved by the commission.

(3) Control of exotic species.

(a) Control of exotic plants and animals may be undertaken in a manner approved by the commission. There may be no attempt to eradicate exotic species that have become a stable part of the biotic community unless this can be accomplished without disturbance of natural conditions.

(b) Control of exotic plants may be undertaken by control of plant succession as provided in this administrative regulation or by management practices allowed in this administrative regulation.

(4) Any measures for population control of any species to be applied must be provided for in a written plan approved by the commission. Except as provided in the articles of dedication or approved by the commission, control measures shall be undertaken only by the commission staff or others approved by the commission.

(5) Management of species of plants and animals monitored by the commission and species of management concern.

(a) Habitat manipulations and protective measures in favor of particular species shall be undertaken only as approved by the commission. Approval shall be based upon a finding by the commission that describes the proposed activities and addresses species life history, habitat requirements of the species, characteristics and objectives of the preserve and other relevant information.

(b) Control of plant succession in favor of particular species shall be as provided in this administrative regulation.

(6) Introduction of plants and animals. No plants or animals or their reproductive bodies shall be brought into a nature preserve or moved from one (1) place to another within a preserve except with approval of the commission.

Section 14. Use Tolerance. Human use of a nature preserve shall be allowed only to such extent and in such manner as will not impair natural conditions. The articles of dedication may specify the controls and restrictions to be placed on access and use. The commission as owner, or the landowner and the commission upon agreement, may further restrict access and use as necessary to protect the nature preserve.

Section 15. Character of Visitor Activity. (1) Visitor activity shall be regulated to prevent disturbance of a nature preserve beyond what it can tolerate without permanent deterioration. Visitors without permits for research or educational activities shall be restricted to trails and areas open to off-trail use and may be otherwise restricted in movement. Persons wishing to traverse a nature preserve elsewhere than on trails or other areas open to visitation shall obtain permission from the commission.

(2) Public use shall be in accordance with the articles of dedication of the preserve, and such rules as may be approved by the commission for a nature preserve.

(3) Hunting, fishing, and trapping shall not be allowed unless provided for in the articles of dedication for the nature preserve and shall be subject to restrictions approved by the commission. Additional rules, administrative regulations, or restrictions may be adopted by the commission on a preserve basis to ensure that the preserve is protected adequately from an inappropriate overbalance of game species or impending disease problems of game or nongame species.

(4) Visitors shall not bring pets into a nature preserve, except as allowed pursuant to permission to hunt in a nature preserve.

(5) A visitor carrying a deadly weapon on a nature preserve shall not discharge the weapon unless it is necessary for either self-defense or hunting if the visitor has previously obtained permission from the Commission to hunt on the [~~Deadly weapons shall not be carried by visitors to a nature preserve except as allowed pursuant to permission to hunt in a~~] nature preserve.

Section 16. Access Control. (1) Ingress and egress shall be allowed only at such locations and under such conditions as may be specified by the commission.

(2) The owner, custodian, and commission have the authority to further limit access as may be necessary for protection and proper management of the nature preserve.

Section 17. Orientation and Guidance of Visitors. Orientation and guidance of visitors shall be in accordance with the articles of dedication, and as approved by the commission. Interpretive signs, structures or labels shall be approved by the commission.

Section 18. Permission for Research or Educational Activities. (1) A person wishing to engage in research or educational activities on a nature preserve not otherwise permitted by these rules or by the articles of dedication for the nature preserve shall secure permission of the commission. If the activities are to be carried on by a group, permission may be issued to the group leader who shall be responsible for the actions of the group.

(2) Permission is required for educational use of a preserve only if activities are to include collecting or activities other than walking and observation.

(3) The application for permission shall be on a form prescribed by the commission. It shall include the name, address, position, professional qualifications, and general field of interest of the applicant and a description of the proposed activities including the objective, methods and procedures to be followed, records to be kept, duration of the project areas to be visited, frequency and length of visits, and detailed description of disturbances to be made. If collecting is to be done it shall be in accordance with this administrative regulation. Information shall be provided on the species or objects to be taken, number of specimens, method of taking, and disposition of specimens. The commission shall provide permission application forms to persons requesting them.

(4) The permission may contain specific provisions and restrictions. Permission may be modified, suspended, or revoked by the commission for violations of the conditions of permission, this section, or based upon a determination of the commission that the activity jeopardizes the nature preserve. Each holder of permission shall submit to the commission an annual report in such form as may be prescribed by the commission. Permission for an activity of no more than the calendar year expires on December 31 of that year. Permission for an activity of longer than one (1) year may be extended annually upon submission of an annual report.

Section 19. Collecting on Nature Preserves. (1) Persons wishing to collect scientific specimens for deposition in a permanent institutional collection available to the public or for purposes of an approved research project may do so pursuant to terms of permission as specified in this administrative regulation.

(2) Permission may restrict the collecting of certain species or specimens. There shall be no collecting of material for classroom or laboratory observation and study or mass collecting by class groups. Exceptions may be provided in the articles of dedication of the nature preserve, or as set forth by the commission.

Section 20. Record. A record shall be kept for each nature preserve. One (1) copy shall be held by the commission at its Frankfort office. The record shall include annual reports of the custodian and all other pertinent documentary material, studies, reports, and descriptions of significant events. Responsibility for assembling the record shall be with the commission director, in conjunction with the custodian of the nature preserve.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: October 14, 2010

FILED WITH LRC: October 14, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2010 at 10:30 a.m. Eastern Time at the Kentucky State Nature Preserves Commission, 801 Schenkel Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not

be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 30, 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: Donald S. Dott, Executive Director, Kentucky State Nature Preserves Commission, 801 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-2886, fax (502) 573-2335.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donald S. Dott, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth rules and guidelines for managing, accessing and protecting nature preserves.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the greatest degree of protection possible to lands dedicated as nature preserves, while allowing public access and enjoyment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.485(2) authorizes the Commission to make and publish policies, rules and regulations for the selection, acquisition, management, protection and use of nature preserves.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the protection of nature preserves as authorized by KRS 146.485(2) by restricting certain activities on nature preserves in an effort to enhance protection.

(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 establishes that visitors to nature preserves who are carrying deadly weapons shall only discharge them if necessary for self-defense or if being used for hunting, if the Commission has granted permission.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to harmonize the constitutionally-protected right of individuals to carry deadly weapons with the restrictions on individuals' activities on nature preserves.

(c) How the amendment conforms to the content of the authorizing statutes: this amendment assists in the protection of nature preserves, as authorized by KRS 146.485(2), by clarifying activity restrictions for visitors.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in informing visitors of the circumstances under which deadly weapons may be brought onto nature preserves.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will not affect an identifiable number of individuals, businesses, organizations, or state and local governments since nature preserves are open to the public at large and no license is required in order to visit a nature preserve.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Not applicable, for the reasons state in the response to question (3).

(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 involved in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable, for the reasons stated in the response to question (3).

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

(a) Initially: No cost is associated with implementing this regulation.

(b) On a continuing basis: No cost is associated with implementing this regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: 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: There will be no fee or funding to implement this amended regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because every person who enters a nature preserve is treated the same and bound to the same restrictions on conduct.

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? There are no particularly identifiable parts or divisions of state or local government because every individual (whether a citizen of the Commonwealth or another state) who enters a nature preserve will be required to adhere to the requirements of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 146.485(2)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? No cost is involved.

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

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

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other explanation: Not applicable.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration.

RELATES TO: KRS 224.43-310, 224.43-315, 224.43-345, 224.43-505

STATUTORY AUTHORITY: KRS 224.43-340, 224.43-345, 224.43-505

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.43-340 authorizes the cabinet to promulgate administrative regulations pursuant to KRS Chapter 224 for the reduction and management of solid waste. This administrative regulation establishes administrative procedures concerning registration of solid waste collectors

and recyclers [the area solid waste management plans described in KRS 224.43-345 and the Kentucky Pride Fund described in KRS 224.43-505.

Section 1. Definitions. (1) "City street cleanup" means the cleanup of litter along a number of city street miles equivalent to one-half (1/2) of a city's total street miles in accordance with KRS 224.43-345(1)(g)4.

(2) "Direct expenses" means:

(a) For anti-litter control program activities, direct expenses include staff time, supplies, contract costs, expenditures related to the operation of equipment, actual disposal costs incurred, and activities, including education, focusing on litter prevention and litter cleanup along public roadways. Direct expenses do not include the purchase of a motor vehicle or lease of a motor vehicle when the lease includes a purchase option; and

(b) For illegal open dump cleanup activities, direct expenses include staff time, supplies, contractor costs, expenditures related to the operation of equipment for remediation, and actual disposal costs. Direct expenses do not include the purchase of a motor vehicle or lease of a motor vehicle when the lease includes a purchase option.

(3) "Illegal open dump" means a facility or site used for the disposal of solid waste that:

(a) Is equal to or greater than two (2) consolidated cubic yards; and

(b)1. Does not have a valid solid waste permit issued by the cabinet pursuant to 401 KAR Chapters 47 and 48; or

2. Has a valid solid waste permit issued by the cabinet pursuant to 401 KAR Chapters 47 and 48, but does not meet the standards established by the cabinet in 401 KAR 30:031.

(4) "In-kind services" means the value of noncash contributions provided by the grant recipient in the form of real property, equipment, supplies, and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(5) "Public road cleanup" means the cleanup of litter along a number of public road miles equivalent to one-third (1/3) of the total public road miles in the solid waste management area, excluding total city street miles in accordance with KRS 224.43-345(1)(g)4.

(6) "Recycler" means the following:

(a) A person who operates a business for the purpose of recycling recovered material, as defined in KRS 224.01-010(20), collected or diverted from the municipal solid waste stream, but does not include a business operated for the exclusive purpose of collecting motor vehicles or motor vehicle parts to be sold for reuse; or

(b) A city or county that is operating a recycling program for the purpose of collecting or diverting recovered material, as defined in KRS 224.01-010(20), from the municipal solid waste stream.

(7) "Regional" means a partnership between two (2) political subdivisions that are not within the same county.

(8) "Solid waste collector" means a person who provides collection of municipal solid waste, including collection for the purpose of recycling.

Section 2. Solid Waste Collector and Recycler Registration and Reporting. (1) Except for counties meeting the definition of recycler, by February 1 of each year, each solid waste collector and recycler shall register and report to the county in which they provide the service in accordance with KRS 224.43-315(2) and (3).

(2) Solid waste collectors and recyclers required to register and report, pursuant to KRS 224.43-315(2) and (3), and this administrative regulation, shall use one (1) of the following:

(a) Municipal Solid Waste Collector (MSW) and Recycler Registration and Reporting Form, DEP 5033, January 2004; or

(b) A form approved by the county that contains, at a minimum, the same information as found in the form specified in paragraph (a) of this subsection.

Section 3. Anti-litter Control Program Activities. (1) Three (3) public road cleanups shall be performed annually by the county.

(2) Two (2) city street cleanups shall be performed annually. These cleanups shall be performed by:

(a) Incorporated cities receiving anti-litter control program grant funds pursuant to Section 4 of this administrative regulation; or

(b) The county, if the incorporated city does not receive anti-litter control program grant funding pursuant to Section 4 of this administrative regulation.

(3) Counties shall report all anti-litter control program activities on Anti-Litter Control Program Annual Report Form, DEP 8061.

(a) This form shall be submitted to the cabinet by March 1 of each year; and

(b) This form shall be used to meet the requirements established in KRS 224.43-310(5)(e).

Section 4. Anti-Litter Control Program Grants. (1) An anti-litter control program grant shall be available to:

(a) Counties; and

(b) Those incorporated cities that provide garbage collection service, either:

1. Directly by the city;

2. By contract between the city and the county; or

3. By a contract between the city and a solid waste collector registered pursuant to Section 2 of this administrative regulation.

(2) Anti-litter control program grant recipients shall use grant funding for direct expenses, as defined in Section 1(2)(a) of this administrative regulation, associated with public road cleanup and city street cleanup requirements referred to in KRS 224.43-505(d)5.

(3) Counties applying for anti-litter control program grant funding shall complete and submit a County Request and Agreement for Anti-Litter Control Program Grant Funding, DEP 7117, September 2010, to the cabinet by November 1 annually.

(4)(a) Incorporated cities, who meet the qualification of subsection (1)(b) of this section, applying for anti-litter control program grant funding shall complete and submit a City Request and Agreement for Anti-Litter Control Program Grant Funding, DEP 7118, September 2010, to the cabinet by November 1 annually.

(b) A copy of the city's solid waste ordinance or solid waste contract shall be submitted with the application.

(5) Applicants for anti-litter control program grant funding shall be in compliance with KRS 224.43-340.

(6)(a) It shall be the responsibility of the anti-litter control program grant funding recipient to determine compliance with subsection (2) of this section.

(b)1. The head of the governing body of the grant recipient shall certify on Certification of Use of Anti-Litter Control Program Grant Funding, DEP 0059, September 2010, that anti-litter control program grant funding was spent in accordance with subsection (2) of this section.

2. Counties shall submit the Certification of Use of Anti-Litter Control Program Grant Funding, DEP 0059, September 2010, to the cabinet by March 1, with the annual report required by KRS 224.43-310(5) and 401 KAR 49:011, Section 7.

3. Incorporated cities shall submit the Certification of Use of Anti-Litter Control Program Grant Funding, DEP 0059, September 2010, to the cabinet by February 1.

(7) Incorporated cities shall submit the Anti-Litter Control Program Annual Report Form, DEP 8061, September 2010, to the cabinet by February 1.

(8) Anti-litter control program grant funding not spent in the calendar year it is received shall be returned to the cabinet by April 15 of the following year.

(9) Grant recipients that complete and submit a certification in accordance with subsection (6) of this section shall not be deemed out of compliance with the public road cleanup and city street cleanup requirements of KRS 224.43-345(1)(g)4.

Section 5. Illegal Open Dump Cleanup Grant Program. (1) A county shall be eligible for illegal open dump cleanup grant funding if the county meets the criteria described in KRS 224.43-505(3)(b).

(2) A county shall meet the requirement of KRS 224.43-505(3)(b)2 by:

(a) Employing a solid waste coordinator who shall not be an elected official; and

(b)1. The county, through an ordinance or resolution, may empower the solid waste coordinator with enforcement powers

necessary to implement all components of the solid waste management plan described in KRS 224.43-340 and 224.43-345; or

2. Counties may employ a solid waste coordinator and an enforcement officer for the duties required to implement all components of the solid waste management plan described in KRS 224.43-340 and 224.43-345.

(3) Eligible counties applying for illegal open dump cleanup grant funding for the cost of eliminating illegal open dumps shall apply annually by submitting the following:

(a) Illegal Open Dump Cleanup Grant Program Grant Application, DEP 7125, September 2010;

(b) Illegal Open Dump Cleanup Grant Program Estimated Expense Worksheet, DEP 6086, September 2010;

(c) Illegal Open Dump Characterization Worksheet, DEP 8063, September 2010; and

(d) DWM Pre-Inspection Report, including photographs;

(4) Grant funding shall be used for the direct expenses, as defined in paragraph 1(2)(b) of this administrative regulation, associated with the cleanup of illegal open dumps approved by the cabinet in the original or supplemental application for the applicable grant period.

(5) Illegal open dumps that have already been remediated two (2) times with assistance from the Kentucky Pride Fund during a five (5) year Areas Solid Waste Management Plan Update period shall not be approved.

(6) Grant recipients shall submit Illegal Open Dump Cleanup Grant Quarterly Progress Report Form, DEP 8062, September 2010, to the cabinet within thirty (30) days of the end of each quarter.

(7) Grant recipients shall submit the Illegal Open Dump Cleanup Grant Program Final Expense Worksheet, DEP 6088, September 2010, with attached invoices for rental equipment and contractor costs, receipts for disposal and miscellaneous supplies, photographs and DWM Post-inspection Report to the cabinet demonstrating actual cleanup costs pursuant to subsection (4) of this section for the illegal open dumps approved in the application not later than thirty (30) days after the end of the grant period.

(8) Grant recipients shall submit a final Illegal Open Dump Cleanup Grant Quarterly Progress Report Form, DEP 8062, September 2010, not later than thirty (30) days after the end of the grant period.

(9) If a county has grant funding remaining after all illegal open dumps approved on the original application have been cleaned, the county may submit a supplemental application.

(a) Supplemental applications shall be submitted by the county at least six (6) months prior to the end of the grant period.

(b)1. Supplemental applications shall include all paperwork required in subsection (3) of this section;

2. Supplemental applications shall be accompanied by the Illegal Open Dump Cleanup Grant Program Final Expense Worksheet, DEP 6088, September 2010, with attached invoices for rental equipment and contractor costs, receipts for disposal and miscellaneous supplies, photographs and DWM Post-inspection Report to the cabinet demonstrating actual cleanup costs pursuant to subsection (4) of this section showing that all illegal open dumps approved in the original application have been remediated; and

3. A final Illegal Open Dump Cleanup Grant Quarterly Progress Report Form, DEP 8062, September 2010, shall be submitted with the supplemental application.

(c) The county shall submit the Illegal Open Dump Cleanup Grant Program Final Expense Worksheet, DEP 6088, September 2010, with attached invoices for rental equipment and contractor costs, receipts for disposal and miscellaneous supplies, photographs and DWM Post-inspection Report to the cabinet demonstrating actual cleanup costs pursuant to subsection (4) of this section for the illegal open dumps approved in the supplemental application not later than thirty (30) days after the end of the grant period.

(10) Illegal open dump cleanup grant recipients shall comply with the terms and conditions of the grant agreement.

(11) Illegal open dump cleanup grant funding not spent in the grant period shall be returned within forty-five (45) days of notification by the cabinet that money needs to be returned.

Section 6. Recycling Grant Program. (1) Counties, waste management districts, cities, urban-county governments or other political subdivisions of the state may apply for recycling grants established in KRS 224.43-505(4).

(2) Applicants shall meet the requirements of KRS 224.43-505(4)(a), (b), and (c).

(3) Applications creating regional recycling infrastructure shall be given priority.

(4) Applications for recycling grants shall be applied for annually.

(5) Applicants shall submit Kentucky Pride Fund Recycling Grant Application, DEP 7126, September 2010.

(6)(a) Grant recipients shall submit quarterly reports not later than thirty (30) days after the end of each quarter throughout the grant period on Kentucky Pride Fund Recycling Grant Quarterly Report, DEP 5038, September 2010.

(b) Grant recipients shall submit the final quarterly report not later than thirty (30) days after the end of the grant period.

(7) Grant recipients shall comply with the terms and conditions of the grant agreement.

(8) Recycling grant funds shall not be awarded to an otherwise eligible entity if the entity is out of compliance with KRS 224.43-315, KRS 224.43-340, 224.43-345, 224.43-505, or 224.50-878.

(9) Recycling grant funding not spent in the grant period shall be returned to the cabinet within forty-five (45) days of notification from the cabinet that grant funding needs to be returned.

Section 7. Household Hazardous Waste (HHW) Management Grant Program. (1) Counties, waste management districts, cities, urban-county governments or other political subdivisions of the state may apply for household hazardous waste management grant funds established in KRS 224.43-505.

(2) Household hazardous waste management grants shall be applied for annually.

(3) Applicants shall submit Kentucky Pride Fund Household Hazardous Waste Management Grant Application, DEP 7127, September 2010.

(4) Grant recipients shall be limited to one event annually, unless a supplemental application is submitted.

(5)(a) Supplemental applications shall be submitted on Kentucky Pride Fund Household Hazardous Waste Management Grant Application, DEP 7127, September 2010, not later than sixty (60) days before the end of the grant period.

(b) Kentucky Pride Fund Household Hazardous Waste Management Grant Close-out Report, DEP 6087, September 2010, shall be submitted with the supplemental application.

(6) Grant recipients shall submit Kentucky Pride Fund Household Hazardous Waste Management Grant Close-out Report, DEP 6087, September 2010, within forty-five (45) days of completion of the event.

(7) Household Hazardous Waste Management Grant funds shall not be awarded to an otherwise eligible entity if the entity is out of compliance with KRS 224.43-315, 224.43-340, 224.43-345, 224.43-505, or 224.50-878.

(8) Household Hazardous Waste Management Grant funding not spent in the grant period shall be returned to the cabinet within forty-five (45) days of notification from the cabinet that grant funding needs to be returned.

Section 7. Extensions. Entities may request an extension to deadlines established by this administrative regulation or established by the cabinet in writing pursuant to this administrative regulation. The extension request shall be submitted in writing and received by the Recycling and Local Assistance Branch of the Division of Waste Management prior to the deadline. The cabinet may grant extensions, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 8. Enforcement. (1) An entity failing to comply with the terms of the grant agreements authorized in this administrative regulation shall be ineligible for grants authorized under KRS 224.43-505 or 224.50-878 until it returns to compliance or for a period of one (1) year.

(2) An entity failing to meet the requirements of 401 KAR 49:011 shall be ineligible for grants authorized under KRS 224.43-505 or 224.50-878 until it returns to compliance.

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

(a) "Municipal Solid Waste (MSW) Collector and Recycler Registration and Reporting Form", DEP 5033, January 2004;

(b) "County Request and Agreement For Anti-Litter Control Program Grant Funding", DEP 7117, September 2010;

(c) "City Request and Agreement for Anti-Litter Control Program Grant Funding", DEP 7118, September 2010;

(d) "Certification of Use of Anti-Litter Control Program Grant Funding", DEP 0059, September 2010;

(e) "Anti-Litter Control Program Annual Report Form", DEP 8061, September 2010;

(f) "Illegal Open Dump Cleanup Grant Program Grant Application", DEP 7125, September 2010;

(g) "Illegal Open Dump Cleanup Grant Program Estimated Expense Worksheet," DEP 6086, September 2010;

(h) "Illegal Open Dump Characterization Worksheet", DEP 8063, September 2010;

(i) "Illegal Open Dump Cleanup Grant Quarterly Progress Report Form", DEP 8062, September 2010;

(j) "Illegal Open Dump Cleanup Grant Final Expense Worksheet", DEP 6088, September 2010;

(k) "Kentucky Pride Fund Recycling Grant Application", DEP 7126, September 2010;

(l) "Kentucky Pride Fund Recycling Grant Quarterly Report Form", DEP 5038, September 2010;

(m) "Kentucky Pride Fund Household Hazardous Waste Management Grant Application", DEP 7127, September 2010; and

(n) "Kentucky Pride Fund Household Hazardous Waste Management Grant Close-out Report", DEP 6087, September 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Division's Web page at waste.ky.gov. [~~"County" means the governing body of a solid waste management area.~~

~~(3) "Illegal open dump" means any facility or site for the disposal of solid waste that does not have a valid permit issued by the cabinet or does not meet the standards established by the cabinet and is equal to or greater than two (2) consolidated cubic yards of solid waste.~~

~~(4) "In-kind services" means the value of noncash contributions provided by parties in the form of real property, equipment, supplies, and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.~~

~~(5) "Public road cleanup" means the cleanup of litter along a number of public road miles equivalent to one-third (1/3) of the total public road miles in the solid waste management area, excluding total city street miles in accordance with KRS 224.43-345(1)(g)4.~~

~~(6) "Recycler" means the following:~~

~~(a) Any person who operates a business for the purpose of recycling recovered material, as defined in KRS 224.01-010(20), collected from the municipal solid waste stream, excluding any business operated for the exclusive purpose of collecting motor vehicles or motor vehicle parts to be sold for reuse; or~~

~~(b) A recycling program operated by a municipality for the purpose of collecting recovered material, as defined in KRS 224.01-010(20), from the municipal solid waste stream.~~

~~(7) "Solid waste collector" means a person who provides collection of municipal solid waste, including collection for the purpose of recycling.~~

~~Section 2. Waste Collector and Recycler Registration and Reporting. (1) By February 1 of each year, each solid waste collector and recycler shall register and report in accordance with KRS 224.43-315(2) and (3).~~

~~(2) Solid waste collectors and recyclers required to register and report, pursuant to KRS 224.43-315(2) and (3), and this administrative regulation, shall utilize DEP Form #5033 "Municipal Solid Waste (MSW) Collector and Recycler Registration and Reporting Form" incorporated by reference in Section 7 of this administrative regulation.~~

~~Section 3. Litter Abatement Funding. (1) Liter abatement funding to complete the public road cleanup requirements established in KRS 224.43-345(1)(g)4 shall be available to the counties and those incorporated cities that provide garbage collection service, either directly by the city or the county, or by contract between the municipality and a registered solid waste collector.~~

~~(2) Litter abatement funding shall be utilized for direct expenses associated with public road cleanup requirements established in KRS 224.43-345. Direct expenses include staff time, supplies, contract costs, expenditures related to the operation of equipment, street sweeping activities, actual disposal costs incurred, and education activities focusing on litter prevention and litter cleanup activities along public roadways. Direct expenses do not include the purchase of a motor vehicle, or lease of a motor vehicle, when the lease includes the purchase option.~~

~~(3) All recipients of litter abatement funds shall provide a twenty-five (25) percent match to the litter abatement funding in accordance with KRS 224.43-505(3). The match may be fulfilled through in-kind services.~~

~~(4) Counties and cities shall complete and return a "County Request for Litter Abatement Funding" document to the cabinet to be eligible for funding.~~

~~Section 4. Litter Abatement Activities. (1) Three (3) public road cleanups shall be performed annually by the county.~~

~~(2) Two (2) city street cleanups shall be performed annually by incorporated cities receiving litter abatement funds or by the county, if the incorporated city does not receive funding.~~

~~(3) Counties shall report to the cabinet on litter abatement activities in the annual report required by KRS 224.43-310(5).~~

~~(4) Incorporated cities that enter into an agreement with the cabinet to receive a portion of a county's litter abatement funding shall report annually to their county by February 1, demonstrating that the city used the litter abatement funds it received appropriately pursuant to Section 3(2) of this administrative regulation.~~

~~(5) Counties and incorporated cities that utilize litter abatement funding in accordance with Section 3(2) of this administrative regulation to meet public road cleanup requirements established in KRS 224.43-345(1)(g)4 and Section 4 of this administrative regulation shall not be deemed out of compliance with the public road cleanup requirements of KRS 224.43-345(1)(g)4.~~

~~Section 5. Illegal Dump Remediation Costs Reimbursement. (1) Funding for illegal open dump remediation established in KRS 224.43-505 is available to counties that meet the eligibility requirements of KRS 224.33-505(2)(c). The cabinet shall reimburse eligible counties seventy-five (75) percent of remediation costs of eliminating illegal open dumps that pose the greatest public health and environmental risks as determined by the cabinet.~~

~~(2) Eligible counties shall be reimbursed for direct costs associated with illegal open dump remediation. Direct costs include staff time, supplies, contract costs, expenditures related to the operation of equipment for remediation, and actual disposal costs. Direct costs do not include the purchase of a motor vehicle, or lease of a motor vehicle, when the lease includes a purchase option.~~

~~(3) Expenditures paid for with other grant dollars do not qualify as a direct cost.~~

~~(4) Beginning July 1, 2004, a county shall be eligible for reimbursement if the county:~~

~~(a) Meets the criteria described in KRS 224.43-505(2)(c)3a-f; and~~

~~(b) Employs a solid waste coordinator, required pursuant to KRS 224.43-505(2)(c)3b, who shall not be an elected official.~~

~~1. The county, through an ordinance or resolution, shall empower the solid waste coordinator with enforcement powers necessary to implement all components of the solid waste management plan described in KRS 224.43-340.~~

~~2. Counties may employ a solid waste coordinator and an enforcement officer for the duties required to implement all compo-~~

~~nents of the solid waste management plan described in KRS 224.43-340.~~

~~(5) Counties shall not be reimbursed for the costs of remediating the following types of illegal open dumps:~~

~~(a) Illegal open dumps eliminated prior to qualification; or~~

~~(b) Illegal open dumps that recur after being remediated more than two (2) times with assistance from the Kentucky Pride Fund.~~

~~Section 6. Enforcement. Any county or incorporated city failing to comply with the terms of the agreement specified in Section 3(4) of this administrative regulation shall be ineligible for litter abatement funding for the following year.~~

~~Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Municipal Solid Waste (MSW) Collector and Recycler Registration and Reporting Form (January 2004)";~~

~~(b) "County Request for Litter Abatement Funding (July 2004)".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

HENRY C. A. LIST, Deputy Secretary
For LEONARD K. PETERS, Secretary
APPROVED BY AGENCY: October 14, 2010
FILED WITH LRC: October 14, 2010

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 29, 2010 at 10 a.m. (Eastern Time) at 300 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 18, 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 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 November 30, 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: Cassandra Jobe, Division of Waste Management, 200 Fair Oaks, Frankfort, Kentucky 40601, phone (502) 564-6716, fax (502) 564-4049, email Cassandra.jobe@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative procedures concerning the area solid waste management plans described in KRS 224.43-345 and the Kentucky Pride Fund described in KRS 224.43-505.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to administer KRS 224.43-345 and 224.43-505.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the statute by establishing procedures for the Kentucky Pride Fund grant programs and by establishing a reporting mechanism for solid waste collectors and recyclers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in effective administration of the statute by establishing the Kentucky Pride Fund grant 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 amendment changes the dump program to be an upfront grant program instead of a reimbursement program. It also creates the procedures for the recycling and household hazardous waste management grant programs. This amendment also streamlines the litter abatement grant process.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the regulation to be consistent with the statutes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the statutes by making the dump program a grant program and by establishing the recycling and household hazardous waste management grants in regulation.

(d) How the amendment will assist in the effective administration of the statutes: Updates the regulation to be consistent with the statutes.

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

- Counties and cities are eligible for the litter grants established in this regulation.

- Counties are eligible for the illegal open dump grants established in this regulation.

- Counties, waste management districts, cities, urban-county governments and other political subdivisions of the state are eligible for the recycling and the household hazardous waste management grants as outlined in this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation sets out the application procedures and the reporting requirements for the grants administered as part of the Kentucky Pride Fund.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will have no cost for litter applicants as it removes the 25% match previously required. There is a 25% match for the illegal open dump grants, recycling grants, and household hazardous waste management grants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, eligible entities may receive grant monies.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Division of Waste Management already implements these programs.

(a) Initially: There should be no additional cost to implement this amendment.

(b) On a continuing basis: The division typically awards approximately $5 million a year in litter abatement grants, approximately $3 million a year in illegal open dump grants, and approximately $2 million in recycling and household hazardous waste management grants. The division spends approximately $460,000 in administrative costs for these programs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be funded by the Kentucky Pride Fund, which comes from the Environmental Remediation Fee.

(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 and 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 did not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Applicants for grants are required to submit the same information and use the same forms.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including

cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect counties, cities, waste management districts, urban-county governments and other political subdivisions of the state.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.43-505

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

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation currently costs the state approximately $460,000 to implement.

(d) How much will it cost to administer this program for subsequent years? This amendment will cost approximately $460,000 to implement.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation provides a way for political subdivisions of the state, particularly counties and cities, to receive money to properly manage solid waste. There is a statutory provision for counties to pick up litter and to clean illegal open dumps. The grant programs for these two activities will allow the county to have funding for these clean ups without an increased burden to the county budget. The grants for recycling and household hazardous waste management grants will allow political subdivisions to apply for grants to effectively manage these materials.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Amendment)

601 KAR 9:140. Temporary registration plates.

RELATES TO: KRS 186.070, 186A.100, 186A.105(2), 190.030

STATUTORY AUTHORITY: KRS 186A.100(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.100(4) authorizes the cabinet to promulgate administrative regulations governing the application and use of temporary motor vehicle registration. This administrative regulation establishes the application procedures and uses for [~~is necessary to establish the application, records, and use of~~] a temporary registration license plate.

Section 1. Definition. "Panographic" means a surface that if scanned or xeroxed shall produce a secured background word or image.

Section 2. Application. (1) [~~The properly completed application referred to in KRS 186A.100(4) shall be on the form mandated in KRS 186A.060.~~

~~(2)(a)1.~~] A representative of a currently licensed motor vehicle or motorcycle dealer shall apply to the county clerk for a [~~the issuance of~~] temporary registration license plate [~~plates~~] by presenting to the county clerk of residence a photo identification card and a written authorization from the motor vehicle or motorcycle dealership for the representative to apply for a temporary registration license plate [~~executed within the preceding week from the dealer allowing the representative to apply for temporary registration plates~~].

(2)[~~2.~~] If the representative does not have written authorization from the motor vehicle or motorcycle dealer, the county clerk shall compare the representative's photo identification card to the list of persons authorized by the dealer as established in [~~that licensee's dealer plate users pursuant to~~] KRS 186.070(2).

(3)[~~(b)~~] The county clerk shall issue from the Automated Vehicle Information System a receipt that[~~which~~] identifies the:

(a) Motor vehicle or motorcycle dealer;

(b)[~~, the~~] Date of transaction; and

(c)[~~, and the~~] Control numbers of each temporary registration license plate issued.

(4)[~~(c)~~] The employee of a motor vehicle or motorcycle dealer [~~representative~~] shall sign a[~~the~~] receipt form to acknowledge receipt of the temporary registration license plates.

Section 3.[~~2.~~] Number of Temporary Plates. (1) As established in KRS 186A.100(1), a county clerk shall not issue more than one (1) sixty (60) [~~thirty (30)~~] day temporary registration license plate to a motor vehicle, motorcycle, or motor vehicle [~~for a particular vehicle and~~] owner.

(2) A motor vehicle dealer currently licensed pursuant to KRS 186.070 or a motorcycle dealer currently licensed pursuant to KRS 190.030 [~~motor vehicle dealer~~] shall not issue more than one (1) sixty (60) [~~thirty (30)~~] day temporary registration license plate for each sale of a [~~particular~~] vehicle.

(3) A [~~The~~] temporary registration plate shall not be renewed.

Section 4.[~~3.~~] Log of Temporary Registration Plates Issued. (1) A [~~county clerk, deputy clerk or~~] currently licensed motor vehicle dealer [~~who issues a temporary registration plate~~] shall maintain a Temporary Tag Log, TC form 96-210, of information on each temporary registration plate issued as established in[~~, in accordance with~~] KRS 186A.100(2) and 186A.105(2).

(2) The Temporary Tag Log Form shall include the:

(a) Dealer's name;

(b) Dealer's telephone number;

(c) Dealer's principal location of business;

(d) License plate number;

(e) Date of delivery of motor vehicle or motorcycle;

(f) Expiration date of temporary registration plate;

(g) Name of purchaser of motor vehicle or motorcycle; and

(h) Vehicle identification number, make, and model year.

(3) A Temporary Tag Log Form shall be made available upon request to officials of the Transportation Cabinet or law enforcement officers.

(4) The county clerk shall enter dealership applications for temporary registration license plates into [~~The county clerk's log form for recording temporary registration plates shall be maintained in~~] the Transportation Cabinet's Automated Vehicle Information System. The application shall include the[~~and shall contain the following information~~]:

(a) License plate number;

(b) Person to whom the plate is issued;

(c) Vehicle identification number of vehicle for which the plate is issued;

(d) Expiration date of the plate; and

(e) Name of the county clerk or employee of the [~~deputy~~] county clerk who issued the plate. [~~(3) The currently licensed motor vehicle dealers' log form for recording the issuance of a temporary registration plate shall contain the following information:~~

~~(a) Dealer's name, telephone number, and city of principal place of business;~~

~~(b) Plate number;~~

~~(c) Date of delivery of motor vehicle;~~

~~(d) Expiration date of temporary registration plate;~~

~~(e) Name of purchaser of motor vehicle; and~~

~~(f) Vehicle identification number, make, and model year.~~

~~(4) The person issuing the temporary registration plate shall enter all information required by this administrative regulation in the~~

~~log.~~

~~(5) This log shall be made available upon request to officials of the Transportation Cabinet or law enforcement officers.~~]

Section 5.[~~4.~~] Completion of the Temporary Plate. (1) All of the blank spaces of the temporary registration plate shall be completed by the issuing agent using a dark, indelible ink.

(2) (a) The top center portion of the temporary plate shall contain six (6) blocks to be filled in with the expiration date of the temporary plate.

(b) One (1) numeral shall be entered in each block that [~~which~~] shall:

1. Occupy at least eighty (80) percent of the block; and

2. Be written with a wide-tipped marker over the top of a temporary license tag that has a secured panographic background.

Section 6. Incorporation by Reference. (1) "Temporary Tag Log", TC Form 96-210, July 2010, 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, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. [~~in indelible, dark ink over the top of the holographic material.~~

~~(3) After the expiration date has been recorded, the protective cover shall be removed from the lamination strip on the temporary tag, exposing the adhesive. The lamination strip shall be firmly adhered on top of the holographic material to the expiration date portion of the temporary tag by the issuing agent.~~]

THOMAS O. ZAWACKI, Commissioner
MIKE HANCOCK, Secretary
APPROVED BY AGENCY: September 15, 2010
FILED WITH LRC: September 16, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 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 November 30, 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: Ann DAngelo, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for a motor vehicle or motorcycle dealer, or their authorized representatives to apply for a temporary registration license plate. This regulation also establishes the procedures that a county clerk follows in processing the application.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the procedures for dealerships to apply for a sixty (60) day temporary license tag.

(c) How this administrative regulation conforms to the content of the authorizing statues: This regulation establishes procedures governing the application procedure and use of temporary license tags as authorized by KRS 186A.100.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will insure that the public is fully informed of the most current requirements to obtain a temporary license tag.

(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 procedures and requirements. This amendment will reflect the change in KRS 186A.100(1) from 30 days to 60 days for a temporary plate. This amendment will also reflect an upgrade in technology by the cabinet in replacing the use of holographic temporary license tags with panographic backgrounds on temporary plates.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to upgrade the changes in procedures, language, and technology that have occurred since this regulation was last amended in 1997.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment upgrades language and procedures involved in applying for a temporary registration license plate.

(d) How the amendment will assist in the effective administration of the statutes: The motor vehicle and motorcycle dealerships will have the most current procedures for obtaining a temporary license plate. The county clerks will also have the most current procedures for issuing temporary license plates.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed motor vehicle dealers, motorcycle dealers, and county clerks in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Motor vehicle dealers will apply to a county clerk's office for a temporary registration license plate. The clerk will enter information into AVIS (Automated Vehicle Information System) identifying the dealer, date of transaction, and control numbers for each issued plate. The dealer keeps a log of information on each temporary registration plate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Pursuant to KRS 186A.100, a dealer pays $2 for a temporary tag. The county clerk retains $1.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The parties will benefit by having the most current guidelines and procedures for obtaining and issuing temporary license tags.

(5) Provide an estimate of how much it will cost the administrative body to implement the administrative regulation: There are no costs associated with implementing these amendments.

(a) Initially:

(b) On a continuing basis: There will be a cost reduction because temporary tags with panographic backgrounds will be produced in-house at a cost of 4 cents per tag. The old technology holographic tags have been produced outside the cabinet at a cost of 19 cents per tag.

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

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fee for dealerships is established by statute – KRS 186A.100. No fees are established by this regulation either directly or indirectly.

(9) TIERING: Is tiering applied? No tiering is applied. All motor

vehicle and motorcycle dealers are using the same application processes to receive a temporary registration license plate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts procedures in the county clerk's office and the Division of Motor Carriers.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 186A.100

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional costs are required or expected.

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

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

(c) How much will it cost to administer this program for the first year? No costs are required or expected based on these amendments.

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

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

Revenues (+-)

Expenditures (+-)

Other Explanation:

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

815 KAR 35:100. Electrical continuing education procedure.

RELATES TO: KRS 227A.100(7), (9)[~~, EO 2009-535~~]

STATUTORY AUTHORITY: KRS 227A.040(8), 227A.100(7)[~~, EO 2009-535~~]

NECESSITY, FUNCTION AND CONFORMITY: KRS 227A.040(8) authorizes the Department [~~Office~~] of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures to govern the licensure of electricians and electrical contractors. KRS 227A.100(7) requires the department [~~office~~] to promulgate an administrative regulation to establish requirements relating to continuing education, including program content and qualifications of providers. [~~program content, including qualifications for providers. 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 continuing education procedures for master electricians, electricians, and electrical contractors.

Section 1. Proof of Continuing Education Requirements. (1) Prior to license renewal, each licensee shall present proof on Form BCE-EL-1, Electrical License Renewal Proof of Continuing Education, or its electronic equivalent, of completion of at least six (6) hours of continuing education for each license held during the immediately preceding twelve (12) months.

(2) The proof shall be signed by the licensee and certified by the provider of the continuing education course [~~on Form SFM-ECEC-1, Electrical License Renewal Proof of Continuing Education, or its electronic equivalent~~].

Section 2. Continuing Education Course Requirements. (1) Continuing education for master electrician and electrician licensees shall relate to the electrical code [~~National Electric Code (NFPA 70) or other electrical codes~~] incorporated by reference into 815 KAR 7:120, Kentucky Building Code; [~~or~~] 815 KAR 7:125, Kentucky Residential Code; and 815 KAR 10:060, Standards of Safety; or to safety practices and procedures.

(2) Continuing education for electrical contractors shall relate to business and employment law, business practices, and safety practices and procedures.

(3) A maximum of [~~Only~~] two (2) of the six (6) hours of continuing education required for electricians, master electricians, and electrical contractors may [~~shall~~] be safety practices and procedures.

Section 3. Continuing Education Providers. (1) Continuing education shall be provided by:

(a) One (1) of the organizations listed in KRS 227A.100(7); or

(b) [~~by~~] An individual or organization recommended by the Electrical Advisory Committee and approved by the Department of Housing, Buildings and Construction.

(2) Each continuing education course provider shall register with the department. Registration shall be valid for two (2) years from the date of issuance.

(3) To register, an applicant shall complete and submit Form BCE-EL-8, Electrical License Continuing Education Provider Registration, which is incorporated by reference.

(4) The department shall maintain a list of approved continuing education providers.

(5) Course providers shall report to the department any change in registration information within thirty (30) days of the change taking effect.

(6) In addition to the provider registration requirements, an applicant for certification as a continuing education provider shall submit the following information to the Department of Housing, Buildings and Construction:

(a) Syllabus of courses to be offered;

(b) Times and dates that courses will be offered;

(c) Location where courses will be offered;

(d) Availability of courses to the general public;

(e) Fees to be charged for the courses;

(f) Identity and qualifications of teachers; and

(g) Attendance verification procedures.

(7)[~~(3)~~] The Department of Housing, Buildings and Construction shall certify the applicant if it determines that:

(a) The applicant can reliably provide continuing education;

(b) The applicant has verified that [~~shall provide~~] an accurate certification of attendance at all courses offered shall be provided to the department. If provided by e-mail or fax, certification shall be received by the department within five (5) business days of completion of the class. If submitted by first class mail, certification shall be postmarked within five (5) business days of completion of the class; and

(c) All courses offered by the applicant shall be taught by persons with sufficient technical knowledge of the subject matter.

(8)[~~(4)~~] Certification shall be denied, suspended, or revoked if the Department of Housing, Buildings and Construction determines, after an opportunity to be heard pursuant to KRS Chapter 13B, that the individual or organization no longer meets the requirements of [~~subsection (3) of~~] this section.

(9)[~~(5)~~] All continuing education providers shall notify the Department of Housing, Buildings and Construction of all courses to be offered at least thirty (30) days prior to the courses' scheduled dates [~~courses~~].

(a) The notice shall include the date, time, location and topic of the course and the fee to be charged, if any.

(b) The Department of Housing, Buildings and Construction shall maintain a list of all courses to be offered and make the list

available to the public.

(10)[~~(6)~~] For classes open to the public, continuing education providers shall not establish a minimum number of attendees required to hold a class.

(11)[~~(7)~~](a) Except as provided in paragraph (b) of this subsection, a provider shall notify the Department of Housing, Buildings and Construction, as well as those who have registered to attend, a minimum of one (1) week prior to the cancellation of any class.

(b) A class may be cancelled within one (1) week of the scheduled class date if necessary due to a natural disaster or inclement weather. Reasonable steps shall be taken to inform the registered attendees and the department of the cancellation and reason for the cancellation.

(12)[~~(8)~~] On written request by a licensee, the Department of Housing, Buildings and Construction may recognize for continuing education credit courses attended in another state if the material covered complies with Section 2 of this administrative regulation.

Section 4. Certified Electrical Inspectors. A certified electrical inspector holding an inactive master electrician or electrician license may apply six (6) hours of the continuing education required by 815 KAR 35:015, Section 8(1), to the required six (6) hours for a master electrician or electrician's license if the hours are not used to satisfy the continuing education requirement for electrical contractors.

Section 5. Inactive License. As a condition of reactivation of an inactive license, a licensee shall present proof of completion of at least six (6) hours of continuing education from the prior twelve (12) months. Prior to activating an inactive license, the license holder shall provide proof that the license holder has completed six (6) hours of continuing education for each year the license has been inactive.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form BCE-EL-1, Electrical License Renewal Proof of Continuing Education, October 2010; and

(b) Form BCE-EL-8, Electrical License Continuing Education Provider Registration, October 2010. [~~Form SFM-ECEC-1, Electrical License Renewal Proof of Continuing Education, March 2005, is incorporated by reference.~~]

(2) This material may be inspected, copied, or obtained, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5404, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: October 10, 2010

FILED WITH LRC: October 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2010, at 9 a.m., EST, 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 November 17, 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 November 30, 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: Michael D. Bennett, Staff Attorney, Department of Housing, Buildings and Construction. 101 Sea Hero Road, Suite 100. Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Michael D. Bennett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education procedures for master electricians, electricians, electrical contractors and continuing education providers.

(b) The necessity of this administrative regulation: KRS 227A.040(8) requires the department to promulgate administrative regulations to establish procedures for the governing of electrical licenses. KRS 227A.100(7) requires the department to promulgate an administrative regulation to establish requirements relating to continuing education, including requirements for continuing education providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227A.040(8) requires the department to promulgate administrative regulations to establish procedures for the governing of electrical licenses; KRS 227A.100(7) requires the department to promulgate an administrative regulation to establish requirements relating to continuing education, including requirements for continuing education providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for continuing education of electricians as governed by KRS 227A.100(7) and sets forth requirements for those who wish to provide continuing education to electricians, as recommended by the Electrical Advisory Committee and approved by the Department of Housing, Buildings and Construction.

(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 requires those seeking to be a continuing education provider to register with the department.

(b) The necessity of the amendment to this administrative regulation: This amendment sets forth registration requirements for continuing education providers as recommended by the Electrical Advisory Committee and approved by the Department of Housing, Buildings and Construction. The amendment allows the department to better coordinate providers and classes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227A.100(7) sets the requirements for continuing education and also allows the Department of Housing, Buildings and Construction to establish requirements for continuing education providers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows the department to better coordinate providers and classes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certified continuing education providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Continuing education providers will have to file a form provided by the department which contains essential contact information.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each continuing education provider will see no additional cost associated with providing the requested information.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Registered continuing education providers will see greater efficiency in recordkeeping.

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

(a) Initially: There is no initial cost to implement this administrative regulation or its amendment.

(b) On a continuing basis: There is no continuing cost associated with this administrative regulation or its amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for implementation and enforcement of this administrative regulation is provided by agency funds through the Department of Housing, Buildings and Construction.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied in this case. All electrical continuing education providers are being treated equally under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Housing, Buildings and Construction, Division of Building Code Enforcement, Electrical Licensing Section, 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 227A.040(8) and 227A.100(7).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will have no impact on expenditures or revenues.

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

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

(c) How much will it cost to administer this program for the first year? There will be no additional cost incurred in the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program 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: There is no cost associated with this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management
(Amendment)

908 KAR 3:050. Per diem rates.

RELATES TO: KRS 210.710, 210.720, 210.730

STATUTORY AUTHORITY: KRS 194A.050(1), 210.720(2), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) requires the Secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to implement KRS 210.700 to 210.760, the Patient Liability Act of 1978. This administrative regulation establishes the patient cost per day for board, maintenance and treatment at facilities operated by the cabinet.

Section 1. Facility Rates. (1) Facilities operated by the cabinet shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (2) of this section that is provided.

(a) The per diem rate through the effective date of this administrative regulation, for room and board for each facility shall be as follows:

Facility	Rate
Central State Hospital	$660[~~595~~]
Central State - ICF/MR	$1,060[~~1,015~~]
Western State Hospital	$610[~~480~~]
Western State Nursing Facility	$295[~~265~~]
Outwood ICF/MR	$365[~~310~~]
Oakwood Community Center	$865[~~860~~]
Hazelwood Center	$660[~~700~~]
Glasgow State Nursing Facility	$360[~~355~~]
Del Maria	$665[~~645~~]
Meadows	$730[~~635~~]
Windsong	$601[~~670~~]
Eastern State Hospital	$410
Volta House	$140

(b) Effective the effective date of this administrative regulation, the per diem shall be as follows:

Facility	Rate	
Central State Hospital	$685[~~660~~]	
Central State - ICF/MR	$1,025[~~1060~~]	
Western State Hospital	$720[~~610~~]	
Western State Nursing Facility	$350[~~295~~]	
Outwood ICF/MR	$390[~~365~~]	
Oakwood Community Center	Unit 1	$960
	Unit 2	$910
	Unit 3	$910
	Unit 4	$985[~~$ 865~~]
Hazelwood Center	$780[~~660~~]	
Glasgow State Nursing Facility	$325[~~360~~]	
Del Maria	$640[~~665~~]	
Meadows	$670[~~730~~]	
Windsong	$720[~~610~~]	
Eastern State Hospital	$445[~~410~~]	
Volta House	$140	

(2) A separate charge shall be imposed if the following treatment services are provided at a Department for Mental Health and Mental Retardation Services facility listed in subsection (1) of this section:

(a) Physicians services;
(b) EEG;
(c) EKG;
(d) Occupational therapy;
(e) Physical therapy;
(f) X-ray;
(g) Laboratory;
(h) Speech therapy;
(i) Hearing therapy;
(j) Psychology;
(k) Pharmacy;
(l) Respiratory therapy;

(m) Anesthesia;
(n) Electroshock therapy;
(o) Physician assistant; or
(p) Advanced registered nurse practitioner.

Section 2. Board, Maintenance and Treatment Charges. Cost per day for board, maintenance and treatment charges shall be established using the last available cost report increased for inflation. Current rates shall be posted at each facility.

STEPHEN HALL, Commissioner
JANIE MILLER, Secretary
APPROVED BY AGENCY: October 13, 2010
FILED WITH LRC: October 13, 2010
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 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 November 15, 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 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 until the close of business November 30, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS And Tiering Statement

Contact Person: Glenn Bryant or Ijeoma Eneje (502) 564-4860
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation requires the Secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving those services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assure that cabinet facilities maintain the financial ability to care for persons with mental health and mental retardation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.720(2). This administrative regulation requires the cabinet to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation at frequent intervals establishes the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet. It enables the cabinet to recoup the actual costs of providing room, board and treatment to persons with mental illness and mental retardation, and to establish a uniform charge rate for each facility.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to establish the revised patient cost per day for facilities operated by the cabinet.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to assure that the per diem charge covers the actual costs incurred in the rendition of client care.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.720(2). The amendment requires the cabinet to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet.
(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720(1). The amendment requires that every patient admitted to a facility operated by the cabinet, except for prisoners transferred in accordance with KRS 202A.201 shall be charged for board, maintenance, and treatment. This administrative regulation establishes a rate for room, board, and treatment at the facilities operated by the Cabinet for Health and Family Services. This charge rate reflects the actual cost of providing these services to clients.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are sixteen (16) state operated facilities affected by this administrative regulation. This amendment will primarily affect patients admitted to facilities operated by the cabinet who have the resources to pay for their care, or who have third party payers other than Medicaid or Medicare.
(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: This administrative regulation will assure that state operated facilities have sufficient revenues to provide the same level of care to indigent citizens as at present.
(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 facility will be required to change the charge rates in their billing system.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any cost to comply with this administrative regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This change will ensure that the facilities are reimbursed appropriately for services and treatments they rendered.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will not be an initial cost to implement this administrative regulation.
(b) On a continuing basis: There will not be an ongoing cost to implement this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds. The facilities operated by the cabinet will be required to change the charge rates on their computerized billing systems.
(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 adjusts the charge rates as established by this amendment. These changes are needed to continue the provision of inpatient care at current levels. No increase in funding will be needed because functions of billing and financial record keeping for state operated facilities are currently in place.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation establishes charges for room, board, and treatment at state operated facilities that are currently below cost. Per diem rates are set utilizing the facilities most recently completed cost reports.
(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because all facility rates are set based on actual cost.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 16 state operated facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.720(2)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will ensure appropriate charges for services to clients receiving treatment in any of the 16 state operated facilities.

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

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

(c) How much will it cost to administer this program for the first year? There will be any cost associated to administrating this regulation.

(d) How much will it cost to administer this program for subsequent years? There will not be any cost related to administrating this regulation.

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

Revenues (+/-): This administrative regulation does not generate any revenue.

Expenditures (+/-): This administrative regulation sets per diem rate for facilities operated by the cabinet.

Other Explanation:

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Repealer)

703 KAR 5:171. Repeal of 703 KAR 5:170.

RELATES TO: KRS 158.782, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 158.782
NECESSITY, FUNCTION, AND CONFORMITY: This is to repeal administrative regulation 703 KAR 5:170, Kentucky Highly Skilled Educator Program Criteria. This administrative regulation is no longer required because the Highly Skilled Educator Program established pursuant to KRS 158.782 is being replaced with a regulation which will outline assistance to low-achieving schools utilizing specialists selected pursuant to KRS 158.782.

Section 1. 703 KAR 5:170, Kentucky Highly Skilled Educator Program criteria, is hereby repealed.

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

TERRY HOLLIDAY, Ph.D.
DAVID KAREM, Chairperson
APPROVED BY AGENCY: October 12, 2010
FILED WITH LRC: October 13, 2010 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 24, 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 November 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 703 KAR 5:170 which establishes the Highly Skilled Educator Program pursuant to KRS 158.782.
(b) The necessity of this administrative regulation: This regulation is no longer required because the Highly Skilled Educator Program established pursuant to KRS 158.782 is being replaced with a regulation which will outline assistance to low-achieving schools utilizing specialists selected pursuant to KRS 158.782.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation repeals a regulation no longer required due to the promulgation of a new regulation pursuant to KRS 158.782.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of this administrative regulation will permit the promulgation of a new regulation which will outline a revised system of high skilled education assistance.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation:
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statute:
(d) How the amendment will assist in the effective administration of the statutes:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All schools and districts.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The repeal of this administrative regulation will permit the promulgation of a new regulation which will outline a revised system of high skilled education assistance.
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No additional costs.
(b) On a continuing basis: No additional costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding is necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts and the Department of Education.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional revenue generated by this administrative regulation.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None
(c) How much will it cost to administer this program for the first year? The proposed amendment will require no additional cost.
(d) How much will it cost to administer this program for subse-

quent years? The proposed amendment will require no additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)

703 KAR 5:190. Assistance to low-achieving schools.

RELATES TO: KRS 158.6455, 158.782

STATUTORY AUTHORITY: KRS 156.070, 158.782

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.782 requires the Kentucky Board of Education to promulgate administrative regulations to set forth the criteria for highly skilled education assistance to schools. This administrative regulation establishes the criteria for the Kentucky District 180 Assistance Program.

Section 1. Definitions. (1) "Centers for Learning Excellence" means collaborative hubs, where multiple support partners and providers will work together to assist schools and districts which are identified for educational recovery and which are clustered and assigned to these centers.

(2) "District 180 Assistance Program" means a specific organizational unit at the Kentucky Department of Education designated to provide highly skilled leadership, support and education assistance for low-achieving schools through the use of education recovery directors, education recovery leaders and education recovery specialists.

(3) "Education recovery director" means staff selected by the Commissioner of Education to provide leadership to the Centers for Learning Excellence.

(4) "Education recovery leader" means the individual selected by the Commissioner of Education, responsible for mentoring and guidance to the principal in a persistently low achieving school as identified through the criteria set forth in KRS 160.346 and 703 KAR 5:180, with functions relating to instructional leadership and school improvement.

(5) "Education recovery specialist" means individuals with experience in improving student outcomes selected by the Commissioner of Education who are responsible for working with staff in a persistently low achieving school as identified through the criteria set forth in KRS 160.346 and 703 KAR 5:180 with functions relating to instruction and school improvement.

(6) "Intervention specialist" means individuals with experience in improving student outcomes selected by the Commissioner of Education who are responsible for working with multiple schools identified through the criteria set forth in KRS 160.346 and 703 KAR 5:180 with functions relating to instruction and school improvement.

Section 2. The Commissioner of Education shall appoint an advisory committee to provide feedback and advice to the Department of Education on the implementation and management of the assistance program. The advisory committee may include representation from teachers, school administrators, business, parents, community, higher education, professional education associations, school boards, and the Department of Education.

Section 3. The Application and Selection Process. (1) The application process shall be open to certified educators who meet the requirements established in this administrative regulation and are willing to fulfill the purposes and requirements of the assistance program.

(2) The application and selection process shall allow for self-nomination and provide for a broad spectrum of instructional positions that include statewide representation.

(3) The Department of Education shall publicize the program criteria and procedures as established in this administrative regulation and make educators aware of the opportunity to apply to the Kentucky District 180 Assistance Program.

(4) Applications for participation in the Kentucky District 180 Assistance Program shall be submitted to the Commissioner of Education.

(5) The Commissioner of Education shall complete the identification and designation of education recovery directors, education recovery leaders, education recovery specialists and intervention specialists by April 1 of each year.

Section 4. (1) Candidates for the Kentucky District 180 Assistance Program staff shall have the following experience and certification:

(a) Valid teaching or administrative certification;

(b) A minimum of five (5) years of experience as a teacher or as an educational administrator, demonstrating increased levels of student achievement; and

(c) Employment as a teacher or administrator within the last three (3) years.

(2) Candidates shall be evaluated upon the following personal characteristics:

(a) Integrity;

(b) Personally committed to the welfare of all children;

(c) Flexibility;

(d) Strong sense of purpose and goal orientation;

(e) Sense of humor; and

(f) Sound judgment.

(3) Candidates for education recovery directors or education recovery leaders shall be evaluated based upon leadership and management knowledge and skills and shall demonstrate the capacity to enhance knowledge and skills in order to remain current on effective practices in the following areas relevant to turning around low achieving schools:

(a) Personnel practices and proper evaluation procedures, policies, statutes, administrative regulations, and due process procedures;

(b) Written and oral communications;

(c) Budget management and planning;

(d) Organization and planning;

(e) Data analysis and problem solving;

(f) Collaboration and team building;

(g) Working productively with colleagues and culturally diverse populations; and

(h) Initiating, supporting, and sustaining innovations.

(4) Individuals designated as education recovery specialists or intervention specialists shall have demonstrated curriculum and instructional knowledge and skills or demonstrated the capacity to enhance knowledge and skills in order to remain current on effective practices in the following areas:

(a) Effective, evidence-based educational practices;

(b) Curriculum development and alignment focused on the Kentucky curriculum;

(c) Multiple instructional methodologies; and

(d) Instructional technology.

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 HOLLIDAY, Ph.D.
DAVID KAREM, Chairperson

APPROVED BY AGENCY: October 12, 2010

FILED WITH LRC: October 13, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on November 24, 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 November 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321, email kevin.brown@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the structures for the Division of District 180 and Centers for Learning Excellence to provide assistance to low-achieving schools and the requirements and characteristics for staff hired to assist these schools.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.782, setting forth the guidelines for providing highly skilled education assistance to schools and school districts.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for establishing the Division of District 180 and Centers for Learning Excellence in order to set forth the guidelines for providing highly skilled education assistance to schools and school districts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics for establishing the Division of District 180 and Centers for Learning Excellence in order to set forth the guidelines for providing highly skilled education assistance to schools and school districts pursuant to KRS 158.782.

(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 an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky that have schools identified as low-achieving and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The proposed regulation will impact identified schools and districts by providing the detail necessary for them to access highly skilled education assistance according to KRS 158.782.

(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: Schools and districts will be required to work cooperatively with highly skilled education assistance staff assigned to them in order to build capacity and increase student achievement in identified schools.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the schools or districts other than minimal administrative costs. Highly skilled education assistance is currently paid through the Highly Skilled Education Fund and federal funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The identified low-achieving schools will have an improved chance of turning around their struggling school by qualifying for significant fiscal and human resources to assist in the school improvement efforts.

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

(a) Initially: The proposed regulation results in additional costs to the Kentucky Department of Education to hire qualified staff and provide for their training and travel. In addition the Kentucky Department of Education will provide grants to universities for establishing the Centers for Learning Excellence. The combined cost is estimated at $4,088,000 and will be paid through the Highly Skilled Education Assistance Fund, federal funds and general funds.

(b) On a continuing basis: The proposed regulation results in additional costs to the Kentucky Department of Education to hire qualified staff and provide for their training and travel. In addition the Kentucky Department of Education will provide grants to universities for establishing and continuing the Centers for Learning Excellence. In addition to the initial funding, the yearly, combined cost is estimated at an additional $470,000 per year and will be paid through the Highly Skilled Education Assistance Fund and federal funds and general funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Highly Skilled Education Assistance Fund, federal funds and general funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts containing low-achieving schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.035, 156.070, 158.782.

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 amount of dollars expended by the State for this administrative regulation depends on the number of schools identified as low-achieving. No additional costs are expected.

(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 regulation, as required by KRS 158.782, will result in the combined cost of $4,088,000 and will be paid through the Highly Skilled Education Assistance Fund, federal funds and general funds.

(d) How much will it cost to administer this program for subsequent years? The proposed regulation, as required by KRS 158.782, will result, in addition to the initial funding, the yearly, combined cost of $470,000 per year and will be paid through the Highly Skilled Education Assistance Fund, federal funds and general funds.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Medical Management
(New Administrative Regulation)

907 KAR 3:215. Tobacco cessation coverage and reimbursement.

RELATES TO: KRS 205.520(3), 205.560(1)(j)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)(j), 42 U.S.C. 1396r-8(d).

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the department's coverage and reimbursement of tobacco cessation services.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

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

(3) "FDA" means the United States Food and Drug Administration.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Medically necessary" means that a covered benefit is determined by the department to be needed in accordance with 907 KAR 3:130.

(6) "Physician" is defined by KRS 311.550(12).

(7) "Physician assistant" is defined by KRS 311.840(3).

(8) "Recipient" is defined by KRS 205.8451(9).

(9) "Supervising physician" is defined by KRS 311.840(4).

(10) "Tobacco cessation product" means nicotine replacement therapy:

(a) Gum;

(b) Lozenge;

(c) Patch;

(d) Inhaler; or

(e) Spray.

Section 2. Provider Requirements for a Tobacco Cessation Assessment. A tobacco cessation assessment provider shall be:

(1) A physician who is:

(a) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(b) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671;

(2) A physician assistant working under the supervision of a supervising physician who is:

(a) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(b) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671;

(3) An APRN who is:

(a) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(b) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671; or

(4) Any of the following employed by a local health department:

(a) A physician assistant working under the supervision of a supervising physician;

(b) A physician; or

(c) An APRN.

Section 3. Tobacco Cessation Assessment and Referral. (1) The department shall reimburse for a tobacco cessation assessment if the tobacco cessation assessment is provided:

(a) By a provider listed in Section 2 of this administrative regulation; and

(b) To a recipient.

(2) A tobacco cessation assessment shall:

(a) Be performed over a period of at least thirty (30) minutes;

(b) Be performed face-to-face with the recipient;

(c) Include:

1. Asking the recipient about tobacco use;

2. Advising the recipient to quit using tobacco;

3. Assessing the recipient's readiness to quit using tobacco;

4. Compiling a tobacco usage, medical, and psychosocial history of the recipient;

5. Incorporating a review of the recipient's coping skills and barriers to quitting; and

6. The provider's obtaining of a signed and dated Tobacco Cessation Referral Form from the recipient declaring the recipient's intent to quit using tobacco; and

(d) Be conducted once per course of treatment.

(3)(a) A provider shall complete a Tobacco Cessation Referral Form with the recipient in accordance with the instructions on the form;

(b) Via the Tobacco Cessation Referral Form, a provider and recipient shall choose a tobacco cessation program for the recipient unless:

1. The provider recommends that the recipient should not have to participate in a tobacco cessation program; or

2. A hardship which prevents the recipient from accessing a tobacco cessation program exists; and

(c) If a tobacco cessation program is not selected for a recipient due to subparagraph 1. or 2. of this paragraph, the provider shall denote this on the tobacco cessation referral form.

(4) A provider shall:

(a) Submit a completed Tobacco Cessation Referral Form to the department in accordance with the instructions on the form; and

(b) Give a copy of the completed Tobacco Cessation Referral Form to the recipient.

(5) The department shall reimburse for no more than two (2) tobacco cessation assessments per recipient per calendar year.

(6) If a recipient has a hardship which is not revealed or denoted during an assessment, the department may:

(a) Determine that a hardship exists; and

(b) Exempt the recipient from the requirement to participate in a tobacco cessation program.

Section 4. Tobacco Cessation Medication. (1) If a physician, APRN, or physician assistant working under a supervising physician as specified in Section 2 of this administrative regulation prescribes a medically necessary tobacco cessation medication for a recipient, the physician, APRN, or physician assistant shall prescribe:

(a) An initial one (1) month supply of the medication; and

(b) Up to two (2) refills of the medication.

(2)(a) A recipient who is referred to a tobacco cessation program shall, after participating in the first month of the tobacco cessation program, contact the department as instructed on the Tobacco Cessation Referral Form and indicate the intent to continue participation in the tobacco cessation program for another month.

(b) If the recipient indicates that he or she will continue participation in the program in accordance with paragraph (a) of this subsection, the department shall reimburse for the first refill of the tobacco cessation medication as established in subsection (1)(b) of this section.

(c) If the department does not receive confirmation that a recipient intends to continue participation in the tobacco cessation program, the department shall not reimburse for a refill as established in subsection (1)(b) of this section.

(3)(a) A recipient who is referred to a tobacco cessation program shall, after participating in the second month of the program, contact the department as instructed on the Tobacco Cessation Referral Form and indicate the intent to continue participating in

the tobacco cessation program for another month.

(b) If the recipient indicates that he or she will continue participation in the program in accordance with paragraph (a) of this subsection, the department shall provide reimbursement for the second refill of the tobacco cessation medication as established in subsection (1)(b) of this section.

(c) If the department does not receive confirmation that the recipient intends to continue participation in the tobacco cessation program, the department shall not reimburse for a refill as established in subsection (1)(b) of this section.

Section 5. Tobacco Cessation Reimbursement. (1) For the department to reimburse for a tobacco cessation medication or product provided to a recipient:

(a) The tobacco cessation medication or product shall be medically necessary;

(b) The tobacco cessation medication or product shall be approved by the FDA for tobacco cessation;

(c) The tobacco cessation medication or product shall be prescribed for the recipient in accordance with Section 2 of this administrative regulation;

(d) If the tobacco cessation medication or product is a refill, the recipient shall have met the requirements established in Section 4(2) or (3) of this administrative regulation unless the recipient is exempt from the requirements pursuant to Section 3(3)(b) or (6); and

(e) If subject to prior authorization, the tobacco cessation medication or product shall have been prior authorized by the department.

(2) The department shall reimburse for a combination of nicotine replacement therapy that consists of no more than two (2) tobacco cessation medications or products.

(3) The department shall reimburse for a tobacco cessation medication in accordance with 907 KAR 1:018.

(4) Reimbursement for a tobacco cessation medication shall be limited to two (2) courses of treatment per recipient per calendar year.

(5) The department shall reimburse for a tobacco cessation assessment provided by:

(a) A physician, in accordance with 907 KAR 3:010, Section 2(2)(b);

(b) A physician assistant, in accordance with 907 KAR 3:010, Section 3(6) and (7)(a); or

(c) An APRN, in accordance with 907 KAR 1:104, Section 2(1)(b).

Section 6. Reporting Requirements. (1) A recipient shall:

(a) Upon the department's request, provide information to the department regarding the recipient's success or failure at tobacco cessation as a result of receiving a service reimbursed by the department; or

(b) Upon the provider's request, provide information to the provider regarding the recipient's success or failure at tobacco cessation as a result of receiving a service reimbursed by the department.

(2) A provider shall, upon the department's request, provide information to the department regarding the recipient's success or failure at tobacco cessation as a result of receiving a service reimbursed by the department.

Section 7. Cost Sharing Exemption for Tobacco Cessation Medications. The department shall impose no cost sharing for any tobacco cessation medication referenced in this administrative regulation.

Section 8. Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the provision; or

(2) Disapproves the provision.

Section 9. Appeal. An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be conducted in accordance with 907 KAR 1:563.

Section 10. Incorporation by Reference. (1) The "Tobacco Cessation Referral Form", July 2010 edition, is incorporated by reference.

(2) The material referenced in subsection (1) of this section is available at:

(a) http://www.chfs.ky.gov/dms/incorporated.htm; or

(b)The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: September 30, 2010

FILED WITH LRC: October 1, 2010 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2010, at 9 a.m. in the Health Services Building, First Floor, Conference Suite C, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by November 15, 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 November 30, 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: Lee Barnard or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This is a new administrative regulation which establishes the Department for Medicaid Services' (DMS's) tobacco cessation program provisions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid tobacco cessation program provisions as mandated by the Kentucky legislature pursuant to KRS 205.560(1)(j) and as funding for the program has been provided in the 2010-2012 biennium budget.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation establishes the tobacco cessation program for all Medicaid recipients. Previously, DMS only covered tobacco cessation for pregnant women.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation establishes the tobacco cessation program for all Medicaid recipients. Previously, DMS only covered tobacco cessation for pregnant women.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients who attempt to quit using tobacco, tobacco cessation programs approved by DMS for Medicaid recipients, and providers who refer Medicaid recipients to a tobac-

co cessation program will be affected by the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Medicaid recipients who wish to receive tobacco cessation program benefits from DMS will have to provide a copy of the Tobacco Cessation Referral Form to the individual performing the tobacco cessation program in which the recipient participates or call DMS (to confirm participation) if the particular tobacco cessation program is an online program rather than an in-person program. Providers who perform assessments will have to complete a Tobacco Cessation Referral Form, in conjunction with the recipient, and give a copy of it to the recipient.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid recipients will be able to receive tobacco cessation program benefits.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates that implementing this administrative regulation will cost approximately $ 6.2 million ($1.5 million commonwealth share/$4.7 million federal share) for state fiscal year (SFY) 2011.

(b) On a continuing basis: DMS estimates that implementing the administrative regulation will cost approximately $5.2 million (($1.5 million commonwealth share/$3.7 million federal share) for SFY 2012.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds from state general fund appropriations. The Kentucky legislature allocated $1.5 million in state funds for each of SFY 2011 and 2012 to implement this administrative regulation. Federal matching funds are projected to equal $4.7 million in SFY 2011 and $3.7 million in SFY 2012.

(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: DMS understands that $1.5 million in general share funds was appropriated for state fiscal year 2011 and state fiscal year 2012 for the amendment via the budget bill HB 1 of the 2010 Extraordinary Session of the General Assembly even though the legislation does not explicitly address smoking cessation appropriation for DMS.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? No, the provisions apply equally to the affected parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation and local health departments, who perform tobacco cessation assessments for Medicaid recipients, will be affected.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. No state or federal regulation, other than this administrative regulation, requires or authorizes this action.

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? DMS projects no revenue to be generated by the administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS projects no revenue to be generated by the administrative regulation.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) estimates that implementing this administrative regulation will cost approximately $1.5 million commonwealth share/$4.7 million federal share) for state fiscal year (SFY) 2011.

(d) How much will it cost to administer this program for subsequent years? DMS estimates that implementing this administrative regulation will cost approximately $5.2 million ($1.5 million commonwealth share/$3.7 million federal share) for SFY 2012.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Behavioral Health
(New Administrative Regulation)

908 KAR 2:230. Kentucky Family Peer Support Specialist.

RELATES TO: KRS 200.503(2), 202.505, 202.508, 202.509, 210.005 (2), 210.010, 210.040, 210.370-485, EO 2010-431

STATUTORY AUTHORITY: KRS 12.455, 194A.030, 194A.050, 200.501, 210.450, EO 2010-431

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.450 authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations governing qualifications of personnel, standards for personnel management operations and consultation in ascertaining local needs for community mental health and mental retardation programs. EO 2010-431, effective June 15, 2010, changed the name of the department from Department for Mental Health and Mental Retardation Services to Department for Behavioral Health, Developmental and Intellectual Disabilities. This administrative regulation establishes the minimum eligibility and training for Kentucky Family Peer Support Specialist.

Section 1. Definitions. (1) "Applicant" means an individual seeking to complete the Kentucky Family Peer Support Specialist training.

(2) "Application" means completing the Kentucky Family Peer Support Specialist Training Application Form and the Kentucky Family Peer Support Specialist Short Essay Form and submitting them to the department.

(3) "Certificate" means a document verifying completion of the training requirements for Kentucky Family Peer Specialists as outlined in this administrative regulation.

(4) "Child with a severe emotional disability" is defined by KRS 200.503(2).

(5) "Client" means a child with a severe emotional disability as defined by KRS 200.503(2).

(6) "Community Mental Health - Mental Retardation Board" is defined by KRS 210.370 to 485.

(7) "Core competencies" means the established knowledge and skills that all applicants must demonstrate in order to successfully complete the Kentucky Family Peer Support Specialist training.

(8) "Department" is defined by KRS 194A.030(4).

(9) "Kentucky Family Peer Support Specialist" means an eligible parent/caregiver who has fulfilled the requirements of this ad-

ministrative regulation and who is working under the supervision of a mental health professional.

(10) "Kentucky Family Leadership Academy" or "KFLA" means a prerequisite training designed for parents, caregivers, and youth leaders that foster initial leadership development.

(11) "Mental Health Professional" means a psychiatrist, psychologist, master's level social worker (MSW), master's level clinical counselor, master's level marriage and family therapist, psychiatric nurse or professional equivalent (a minimum of a bachelor's degree in a human services field with two (2) years of experience in mental health related children's services).

(12) "State Interagency Council" is defined by KRS 200.505.

(13) "Statewide Family Organization" means an organization with whom the department contracts to carry out the activities associated with statewide advocacy and support for children and youth with severe emotional disabilities.

Section 2. Eligibility. An applicant shall:

(1) Be a biological parent, adoptive parent, or relative caregiver with permanent legal custody who is raising, or has raised a child with a severe emotional disability who has been or is a client of at least one state funded service;

(2) Have a minimum educational requirement of a high school diploma or General Educational Development (GED) certificate; and

(3) Have successfully completed the KFLA training approved by the department.

Section 3. Department's Responsibility. The department shall assure the following:

(1) Application forms are available to eligible applicants through:

(a) Written or verbal request to the department;

(b) The department's Web site;

(c) Member agencies of the State Interagency Council; and

(d) The Statewide Family Organization

(2) Provision of state level KFLA training;

(3) Notification of Kentucky Family Peer Support Specialist training shall include:

(a) Date(s) of the training;

(b) Time(s) of the training; and

(c) Location of the training;

(4) Provision of the state Kentucky Family Peer Support Specialist training from a standard curriculum with the following core competencies:

(a) Theoretical Knowledge;

(b) System of Care expertise;

(c) Family Support Skills;

(d) Cultural Competence;

(e) Communication Skills;

(f) Organizational Skills;

(g) Advocacy Skills; and

(h) Ethics and Values;

(5) Receipt of documentation of successful completion of the Kentucky Family Peer Support Specialist training;

(6) Maintenance of the following documents:

(a) Application;

(b) Completion of the KFLA;

(c) Competency Examinations; and

(d) Examination results;

(7) The maintenance of a database with the names of Kentucky Family Peer Support Specialists.

Section 4. Kentucky Family Peer Support Specialist Responsibilities. An individual seeking to provide family peer support services shall:

(1) Complete and submit an application for training to the department;

(2) Complete the department approved Family Peer Support Specialist training;

(3) Successfully complete the examination following the training; and

(4) Complete and maintain documentation of a minimum of six (6) hours of related training or education in each subsequent year.

Section 5. Request to Waive the Family Peer Support Specialist Training. (1) An applicant may request to waive the Family Peer Support Specialist training under the following provisions:

(a) Completion of the application;

(b) Documentation of completion of a Family Peer Support Specialist training sponsored by a federal entity or by another state with core competencies consistent with that of the Kentucky Family Peer Support Specialist training; and

(c) Documentation to show that the training has occurred within five (5) years of the application date.

(2) The department shall review all requests to waive the training requirement and may:

(a) Approve in writing, the request based on the documentation provided by the applicant; or

(b) Approve pending successful completion of the Kentucky Family Peer Support Specialist Core Competency Training exam; or

(c) Deny the request in writing, should the applicant fail to demonstrate compliance with any portion of this administrative regulation.

(3) If an applicant is denied a training waiver, he or she may apply to complete the Kentucky Family Peer Support Specialist training in accordance with the requirements of this administrative regulation.

Section 6. Supervision of Family Peer Support Specialists. (1) Kentucky Family Peer Support Services shall be provided under the supervision of a mental health professional who shall complete:

(a) Department approved children's targeted-case management training; or

(b) The KFLA; and

(2) Face- to- face individual supervision meeting shall occur no less than once a month.

Section 7. Scope of Service and Employment. (1) A Family Peer Support Specialist shall:

(a) Be responsible to assist parents or primary caregivers of a client to voice their opinion, needs and goals to benefit the client;

(b) Provide services and structured scheduled activities that

1. Promote advocacy skills;

2. Increase understanding of the client's disability or disabilities

3. Enhance the parent or caregiver's ability to participate in the client's treatment team; and

4. Decreases client isolation.

(c) Share their relevant experiences with other parents and primary caregivers.

(2) A Family Peer Support Specialist may be employed by a:

(a) Community Mental Health - Mental Retardation Board;

(b) State operated or contracted facility; or

(c) Member agency of the State Interagency Council.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Family Peer Support Specialist Training Application Form", 2010 edition; and

(b) "Kentucky Peer Support Specialist Short Essay Form", 2010 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copy right law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities at 100 Fair Oaks Lane, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or via the Statewide Family Organization affiliated with the department.

STEPHEN HALL, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: October 13, 2010

FILED WITH LRC: October 13, 2010 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if request, be held on November 22, 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 November 15, 2010, five work-

days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation until the close of business November 30, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet for Health and Family Services, 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: Michele Blevins or Ijeoma Eneje

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirement for a family peer support specialist position, specifying qualifications, training, and supervision requirements to behavioral health system providers who may employ peer specialists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assure that family peer support specialists working within the behavioral health system are appropriately trained and supervised.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 210.450, in that it establishes qualifications and standards for personnel who participate in meeting behavioral health needs of the citizens of the Commonwealth KRS 200.501.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statute by establishing criteria whereby family peer support specialists can be trained and supervised to meet the behavioral health needs of children and families of the Commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This administrative regulation is not an amendment.

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department for Behavioral Health, Developmental and Intellectual Disabilities (KBHDID).

KBHDID operated and contracted Regional MH/MR Boards (Community Mental Health Centers), (14 Boards which serve all 120 counties of the Commonwealth).

Individuals seeking to become family peer support specialists (estimated 500).

Individuals who may receive services from family peer support specialists (estimated 10,000/year)).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The KDBHDID will be required to implement a system to train family peer support specialists and maintain a database of approved providers.

The Regional MH/MR Boards will be required to establish systems for recruiting, hiring and supervising family peer support specialists.

Individuals seeking to become family peer support specialists will be required to complete the KDBHDID application process and training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost the KDBHDID $50,000 in the first year and $30,000 during each subsequent year to establish and implement the training and certification requirements.

Regional MH/MR Boards will incur the expense necessary to pay salaries and associated costs if they choose to hire a family peer support specialist.

It may cost individuals who become family peer support specialists some expenses associated with obtaining continuing education requirement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): KDBHDID will obtain benefit by increasing the availability of qualified individuals who can provide services and supports to families of youth who have behavioral health issues in the Commonwealth.

Regional MH/MR Boards will benefit by having additional human resources to fulfill their mission to serve individuals with behavioral health issues in their regions.

Individuals who become family peer support specialists will benefit from new employment opportunities.

Individuals receiving services from family peer support specialists will benefit through having access to individuals who may have similar experiences and background.

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

(a) Initially: It will cost approximately $50,000 for the first year to establish and implement the training and certification process.

(b) On a continuing basis: It will cost approximately $30,000 for each subsequent year to provide the training and certification.

(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 Federal Mental Health Block Grant.

(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 administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering will not be applied since every qualified applicant has an equal chance of applying to become a Department approved Kentucky Family Peer Support Specialist.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Division of Behavioral Health within the Department for Behavioral Health, Developmental and Intellectual Disabilities and the Regional MH/MR Boards (Community Mental Health Centers).

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The following statutes authorize the actions taken by this administrative regulation: KRS 200.503(2), 202A.011 (12), 210.005(2) & (3), 210.010, 210.040, 210.370-485.

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 admin-

istrative regulation will not generate new 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? This administrative regulation will not generate new revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? It will cost $35,000 in Federal Mental Health Block Grant funds to provide the curriculum training and maintain the database.

(d) How much will it cost to administer this program for subsequent years? It will cost $30,000 in Federal Mental Health Block Grant funds to provide the curriculum training and maintain the database.

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

Revenues (+/-):

Expenditures (+/-):

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 12, 2010

Call to Order and Roll Call

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 12, 2010, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Elizabeth Tori, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the September 2010 meeting were approved.

Present were:

Members: Senators Elizabeth Tori, David Givens, Alice Forgy-Kerr, and Joey Pendleton and Representatives Leslie Combs, Robert Damron, Jimmie Lee, and Danny Ford.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Sarah Amburgey, Emily Harkenrider, Karen Howard, and Laura Napier.

Guests: Alan Pauw, Kentucky Judicial Retirement System; Dinah Bevington, Personnel Cabinet; Tamela A. Biggs, Kentucky Teachers' Retirement; Rob Carter, Devon Hankins, Ricky Haven, Randy Justice, Gary Morris, Bruce Nix, Don Richardson, Department of Revenue; Steve Bullard, Kentucky Department of Military Affairs, Matt Frohlick, Junior Wright, Andrew Hartley; Department for Local Government; Jonathan Buckley, David Cox, Robert W. Fentress, James E. Manning, State Board of Licensure for Professional Engineers and Surveyors; Becky Klusch, Board of Physical Therapy; Angela Evans, Jeff Boler, Frances Short, Harold Glen Williams, Board for Proprietary Education; Margaret Everson, Karen Waldrop, Department of Fish and Wildlife Resources; Steve Lynn, Ky Law Enforcement Council; Clay Lamb, Allen Larson, Education and Workforce Development Cabinet; Sandra Chapman, DJ Wasson, Department of Insurance; Shaun T. Orme, Chris Thompson, Department of Financial Institutions; Patricia J. Cooksey, Marc A. Guilfoil, Susan B. Speckert, Kentucky Horse Racing Commission; Dawn Bellis, Tim House, George Mann, Richard Moloney, Department for Housing, Buildings, and Construction; Virginia Carrington, Elizabeth Caywood, Justin Dearinger, Department for Community Based Services; David England, Rebecca Johnston, Kim Martin, Horsemen; Mindy L. Coleman, Jeff Johnston, Jockeys' Guild, Inc.; Martin Maline, KHBPA.

The Administrative Regulation Review Subcommittee met on Tuesday, October 12, 2010, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Kentucky Judicial Form Retirement System: System

4 KAR 1:010. General compliance and federal tax laws. Alan Pauw, attorney, represented the Kentucky Judicial Form Retirement System.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct a statutory citation; and (2) to amend Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

4 KAR 1:020. Minimum distribution.

4 KAR 1:030. Rollovers and transfers to other plans.

4 KAR 1:040. Limitation on benefits.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to correct a statutory citation; and (2) to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PERSONNEL CABINET: Personnel Cabinet, General

101 KAR 5:015 & E. Furloughs. Dinah Bevington, general counsel, represented the cabinet.

In response to questions by Representative Ford, Ms. Bevington stated that the furlough requirements applied to all Executive Branch employees in the Commonwealth of Kentucky. Public comments were not submitted to the cabinet during the public comment period.

FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:320 & E. Qualified domestic relations orders. Tamela Biggs, staff attorney, represented the system.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1, 2, 3, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:330 & E. Travel and administrative expenses.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; 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.

Department of Revenue: **Office of Sales and Excise Taxes**: **Forms**

103 KAR 3:020. Sales and telecommunications forms manual. Robert Carter, tax research consultant; Ricky Haven, director, Division of Sales and Use Tax; and Gary Morris, policy advisor, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend Sections 1 to 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.

Office of Income Taxation: Income Tax; Withholding

103 KAR 18:070. Supplemental wages and other payments subject to withholding. Randy Justice, general counsel, Education and Workforce Development Cabinet, appeared in support of this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

DEPARTMENT OF MILITARY AFFAIRS: Military Family Assistance Trust Fund Board: Kentucky Veterans' Program Trust Fund

106 KAR 2:020. Military Family Trust Fund. Colonel Steve Bullard, director of administrative services, represented the board.

In response to a question by Representative Ford, Colonel Bullard stated that this administrative regulation was being amended in response to statutory changes to more quickly help families get funds in an emergency and to allow the board to change discretionary funding for multiple-member applications.

Subcommittee staff stated that the suggested amendments corrected the typographical errors noted on the Staff Review form.

A motion was made and seconded to approve the following amendments: to amend Section 3 to correct typographical errors. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Department for Local Government: County Budget

109 KAR 15:020. County Budget Preparation and State Local

Finance Officer Policy Manual. Andrew Hartley, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs 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.

State Board of Licensure for Professional Engineers and Land Surveyors: Board

201 KAR 18:150. Standards of practice. Jonathan Buckley, general counsel, and David Cox, executive director, represented the board.

In response to a question by Representative Ford, Mr. Cox stated that this administrative regulation was amended to include new technology options, such as GPS for boundary surveys; written disclosure requirements; and changes to material options.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 8, 9 10, 12, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy: Board

201 KAR 22:020. Eligibility and credentialing procedure. Becky Klusch, executive director, represented the board.

201 KAR 22:053. Code of ethical standards and standards of practice for physical therapists and physical therapist assistants.

A motion was made and seconded to approve the following amendment: to amend Section 5 to correct an internal reference. Without objection, and with agreement of the agency, the amendments was approved.

PUBLIC PROTECTION CABINET: Office of Occupations and Professions: Board for Proprietary Education: Board

201 KAR 40:040. Commercial driver license training school curriculum and refresher course. Angela Evans, assistant attorney general; Frances Short, executive director, Office of Occupations and Professions; and Harold Glen Wilham, board member, represented the board.

In response to questions by Senator Givens, Ms. Evans stated that public comments were not submitted during the public comment period. The changes to these administrative regulations included grammatical and technical changes, as well as a substantive change that allowed commercial driver license training schools to use certain equipment that was still safe to use. The language regarding requirements for a criminal background check was deleted because that requirement was already established by statute.

Co-Chair Tori stated that these administrative regulations did not include fee increases and included one (1) fee that was decreased.

201 KAR 40:050. Application for license for commercial driver license training school.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to comply with the formatting requirements of KRS Chapter 13A; and (2) to amend the application incorporated by reference to list the same fees as are listed in the administrative regulation. Without objection, and with the agreement of the agency, the amendments were approved.

201 KAR 40:060. Application for renewal of license for commercial driver license training school.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to comply with the formatting requirements of KRS Chapter 13A; and (2) to amend the application incorporated by reference to list the same fees as are listed in the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 40:070. Commercial driver license training school instructor and agent application and renewal procedures.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend the application incorporated by reference to list the same fees as are listed in the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 40:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, and advertising and solicitation of students by commercial driver license training schools.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 40:100. Standards for Kentucky resident commercial driver training school facilities.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers. Margaret Everson, assistant attorney general, and Karen Waldrop, director, Wildlife Division, represented the department.

JUSTICE AND PUBLIC SAFETY CABINET: Kentucky Law Enforcement Council: Council

503 KAR 1:170. Career Development Program. Steve Lynn, assistant general counsel, represented the council.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 15, 16, 18, and 25 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Workforce Investment: Office of Employment and Training: Unemployment Insurance

787 KAR 1:090. Unemployed worker's reporting requirements. Clay Lamb, staff attorney, and Allen Larson, director, Unemployment Insurance, represented the office.

A motion was made and seconded to approve the following amendment: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Agent Licensing Division: Agent, Consultants, Solicitors and Adjusters

806 KAR 9:030. Adjusters, apprentice adjusters; licenses, restrictions. Sandra Chapman, acting director, Agent Licensing Division, and D. J. Wasson, staff assistant, represented the division.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY 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.

Department of Financial Institutions: Non-Depository Division of Financial Institutions: Mortgage Loan Companies and Mortgage Loan Brokers

808 KAR 12:002. Definitions for 808 KAR Chapter 12. Shaun T. Orme, assistant general counsel, and Chris Thompson, branch manager, represented the division.

A motion was made and seconded to approve the following amendment: to amend Section 1 to insert a definition. Without objection, and with agreement of the agency, the amendment was approved.

808 KAR 12:021. License and registration.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to delete superfluous language; and (2) to amend Sections 1 and 4 through 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 12:022. Examination and investigation fees.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 1 for clarification. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 12:023. Recordkeeping.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

808 KAR 12:024. Change of address, name, control, or agent for service of process.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph; the NECESSITY, FUNCTION, AND CONFORMITY 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.

808 KAR 12:026. Procedures for distributing and using funds from the Mortgage Fraud Prosecution fund.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 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.

808 KAR 12:066. Repeal of 808 KAR 12:065.

808 KAR 12:076. Repeal of 808 KAR 12:075.

808 KAR 12:086. Repeal of 808 KAR 12:085.

808 KAR 12:096. Repeal of 808 KAR 12:095.

Department of Housing, Buildings and Construction: Division of Building Code Enforcement: Kentucky Building Code

815 KAR 7:110. Criteria for expanded local jurisdiction. Dawn M. Bellis, general counsel; George Mann, deputy commissioner; and Tim House, acting director, Division of Heating, Ventilation and Air Conditioning, and director, Division of Plumbing, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; and (2) to amend Sections 1 through 4, 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.

Division of Heating, Ventilation and Air Conditioning Contractors: Heating, Ventilation and Air Conditioning Licensing Requirements

815 KAR 8:035. Reciprocal licensing requirements.

A motion was made and seconded to approve the following amendments: 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. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 8:050. Continuing education requirements for heating, ventilation, and air conditioning (HVAC) license holders.

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, 2, and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Plumbing: Plumbing

815 KAR 20:032. Continuing education requirements for plumbers.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 2, 3, 5, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:040 & E. Procedures for determining initial and continuing education. Virginia Carrington, branch manager, and Elizabeth Caywood, internal policy analyst IV, represented the division.

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.

Food Stamp Program

921 KAR 3:030 & E. Application process.

In response to questions by Representative Ford, Ms. Caywood stated that pursuant to the National Voter Registration Act, applicants for the food stamp program could register to vote as an ancillary part of the application process. The application form was amended for compliance with federal law. Other agencies were not required to provide voter registration opportunities as part of an application process for other programs. The cabinet was subject to litigation and corrective action from the federal government if the application form was not amended to comply with the National Voter Registration Act requirements.

In response to a question by Senator Givens, Ms. Caywood stated that the change to the form involved including a checkbox the applicant could use to indicate that the applicant was either already registered or did not wish to register to vote.

The following administrative regulations were deferred to the November 9, 2010, meeting of the Subcommittee:

GENERAL GOVERNMENT CABINET: Board of Dentistry: Board

201 KAR 8:007E. Repeal of 201 KAR 8:006, 8:015, 8:070, 8:130, 8:135, 8:140, 8:150, 8:160, 8:170, 8:180, 8:185, 8:190, 8:220, 8:225, 8:230, 8:240, 8:250, 8:260, 8:265, 8:270, 8:277, 8:280, 8:290, 8:310, 8:320, 8:330, 8:340, 8:345, 8:350, 8:355, 8:400, 8:420, 8:430, 8:440, 8:450, 8:460, 8:70, and 8:490.

201 KAR 8:390E. General anesthesia, deep sedation, and conscious sedation by dentists.

201 KAR 8:500 & E. Board organization.

201 KAR 8:510 & E. Advisory opinions.

201 KAR 8:540 & E. Dental practices.

Board of Veterinary Examiners: **Board**
201 KAR 16:030 & E. License, renewal notice, exemption.

Board of Licensed Professional Counselors: Board
201 KAR 36:060. Qualifying experience under supervision.

201 KAR 36:070. Education requirements.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply
401 KAR 8:100. Design, construction, and approval of facilities.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Motor Carrier: Division
601 KAR 1:018 & E. Special overweight or overdimensional permits.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: School Administration and Finance
702 KAR 3:246. School council allocation formula: KETS District Administrative System Chart of Accounts.

Pupil Transportation
702 KAR 5:110. Vocational pupils, reimbursement for.

Office of Instruction
704 KAR 3:305. Minimum requirements for high school graduation.

Department of Workforce Investment: Office of Vocational Rehabilitation: Administration
781 KAR 1:040. Rehabilitation technology services.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Thoroughbred Racing
810 KAR 1:009 & E. Jockeys and apprentices. Patricia Cooksey, director of public relations; Marc A. Guilfoil, deputy executive director; and Susan B. Speckert, general counsel, represented the commission. Mindy L. Coleman, counsel, Jockey's Guild, Incorporated; David England, horse trainer; Jeff Johnston, regional manager, Jockey's Guild, Incorporated; Rebecca Johnston, horse trainer; Martin Maline, executive director, Kentucky Horsemen's Benevolent and Protective Association, Incorporated; and Kim Martin, horse exerciser, appeared in opposition to these administrative regulations.

In response to a question by Senator Kerr, Ms. Speckert stated that jockeys were present at the Subcommittee meeting, but that the commission had not received a request from the Jockey's Guild to defer consideration of these administrative regulations.

In response to questions by Representative Lee, Ms. Speckert stated that these administrative regulations were filed as emergencies because the vest requirements protected horsemen and jockeys and was an issue of public safety. Research was still being conducted in 2008 when the commission first began to consider amending standard vest requirements. The commission waited until the vests were produced and available from manufacturers to promulgate the new requirements. The commission did not have statistics indicating that previous vest requirements were inadequate based on recorded injuries. Ms. Speckert stated that the Jockey's Guild had requested that the commission promulgate new vest standards. The commission did not believe that a financial hardship to horsemen existed because stakeholders had known these changes were coming since 2008. Additionally, an overwhelming number of jockeys in Kentucky also rode in Indiana, where the vests requirements were already in place. Therefore, the commission did not think there would not be a financial hardship as most jockeys already had the new vests in order to comply with Indiana's requirements. If these administrative regulations had not been filed as emergencies, the requirements would not be effective until January, 2011, which would be after the Breeder's Cup.

Ms. Cooksey stated that jockeys were initially against any administrative regulations requiring safety vests, but now they almost all complied. She stated the new vest provisions required a better, safer vest. The vests were tested and certified.

In response to a question by Representative Lee, Ms. Cooksey stated that the commission did not have data indicating how many injuries had occurred due to unsafe or inadequate vests, but that the Jockey's Guild probably had that information.

Representative Lee stated that his objection was not to the safety requirements themselves, but because the requirements were established by emergency administrative regulations without giving stakeholders an opportunity to prepare or comment.

Ms. Speckert stated that the requirements being established by emergency administrative regulations may prevent catastrophic injury.

In response to a question by Senator Kerr, Ms. Martin stated that the newly required vests were cumbersome and did not provide enough coverage for safety, including failing to cover the collar bone and the lower abdomen. These vests were not as safe for pony or horse exercisers.

Ms. Johnston stated that the newly required vests did not provide enough protection, including failing to cover the ribcage and the lower spine. She requested that stakeholders be allowed to wear a vest of their own choosing.

Mr. England stated that he represented horsemen, not jockeys, and that newly required vests did not allow horsemen to do their jobs. He cited the failure of the vests to protect the shoulder area and stated that almost every horseman in Kentucky opposed the newly required vests. The only communication made to Turfway Park regarding the new requirements came only four (4) days prior to the effective date of the emergency administrative regulations. Manufacturers were still in the development phase and have indicated some problems with the newly required vests. The process seemed to be rushed.

Mr. Maline stated that the vest requirements should not have been promulgated as emergency administrative regulations. Public input was circumvented because the emergency administrative regulations became effective prior to the public comment period. Concerns were not appropriately addressed by the commission once stakeholders did make comments. The commission refused to defer consideration until stakeholders had more time to communicate their concerns.

Ms. Coleman stated that the Jockey's Guild did ask for safety improvements; however, the guild also requested an injury database for jockeys. The database needed to have preceded safety improvement administrative regulations in order to determine the best safety requirements. In July 2010, there was a welfare and safety summit at Keeneland in order to evaluate vest safety. There had been an increase in paralyzation and fractured vertebrae in the last two (2) years. Research and information processing needed to continue before the new vest requirements were put into place. Manufacturers had modified products since the new requirements, and there were already newer, safer vests available. The speed that the new requirements were put into place caused financial struggles for many horsemen. Indiana had enacted a vest rule; however, jockeys in Indiana had losing-mount payments and health provisions that Kentucky jockeys and horsemen did not have to offset costs.

Mr. Johnston stated that the Jockey's Guild did not approach Association of Racing Commissioners International (ARCI); ARCI approached the guild to discuss vest standards. The guild agreed that the vest standards needed to be updated; however, it should not have been done by emergency administrative regulations and requirements should have been broader to include more vest options. Recent research had shown that the newer vests may be less effective than older versions under higher temperatures. The injury database was needed.

Ms. Coleman stated that the advertising restrictions were set to fail. Sponsors were not interested in dealing with the cumbersome rules. Because the administrative regulations were filed as emergencies in order to get the vest requirements in place quickly, the advertising requirements were also put into effect immediately. Jockeys had the right to fulfill existing, long-term contracts, which could not be fulfilled under the emergency administrative regulation

advertising requirements. A single-race cost could not be determined in many instances if an existing, long-term contract was in place.

In response to questions by Representative Lee, Mr. Johnston stated that data collection regarding injuries to jockeys and horsemen was currently being done through tests in laboratories. There seem to have been more spinal injuries since the new vest requirements. The vests needed to provide both flexibility and impact protection. Injury data may even be able to be collected from past years. One (1) to two (2) years of studies and data collection would be necessary to develop a useful database.

In response to questions by Senator Givens, Mr. Maline stated that the guild and the HBPA knew that there had been ongoing discussion regarding the new vest standards; however, the organizations thought that they would be included in the requirement development process. Their input was not sought by the commission. Mr. Maline stated that Ms. Cooksey told him that the concern was much ado about nothing and that the requirements would only broaden vest options.

In response to a question by Senator Givens, Subcommittee staff stated that deferring consideration of these administrative regulations would not affect the status of the emergency administrative regulations that would still be in effect unchanged.

In response to questions by Co-Chair Tori, Ms. Speckert stated that the commission would agree to defer consideration of these administrative regulations to the November Subcommittee meeting. Ms. Speckert directed members to the timeline, which showed input opportunities from horsemen and jockeys, beginning in 2008. She stated that any claim that a stakeholder was blindsided by the administrative regulations was patently false. Ms. Speckert asked why there had not been complaints from jockeys and horsemen regarding the vest requirements in Indiana because the same jockeys race in Kentucky.

Ms. Cooksey stated that a number of vests not subject to the stakeholders' complaints were in compliance with the newly required standards. These administrative regulations gave more and safer vest options; however, the perfect vest for everyone did not exist.

Representative Lee stated that everything should be done to protect the safety of those who ride horses. The problem was that these administrative regulations were filed on an emergency basis unduly because the commission was unable to provide evidence of accidents related to inadequate vests.

Senator Givens stated that it was important during the administrative regulation process to keep emergency administrative regulations within the scope of statutory requirements. Government agencies were held to a higher standard and needed to provide more than the minimum requirements for stakeholder input. Senator Givens stated his desire that the commission meet with stakeholders and consider their concerns.

Co-Chair Combs stated that the commission should be prepared in November to describe the vest requirements of states other than Kentucky and Indiana, such as New York, California, and Florida.

Co-Chair Tori stated that the commission and stakeholders should work together. She stated that these administrative regulations should not have been promulgated by emergency administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend Section 15(4) to delete the new provisions which require disclosure of advertising agreement terms to the commission; (2) to amend the advertising request form, KHRC 009-001, in conformity; (3) to amend Section 14 to specify that a safety vest shall have a tag, stamp, or similar identifying marker indicating that it meets one (1) of the required safety standards; and (4) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 14 through 17 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to defer consideration of this administrative regulation to the November meeting of the Subcommittee. With the agreement of the agency, this administrative regulation, as amended, was deferred.

810 KAR 1:026 & E. Racing associations.

A motion was made and seconded to approve the following amendments: (1) to amend Section 31 to specify that a safety vest shall have a tag, stamp, or similar identifying marker indicating that it meets one (1) of the required safety standards; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 21, 28, 30, 31, 36, and 37 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to defer consideration of this administrative regulation to the November meeting of the Subcommittee. With the agreement of the agency, this administrative regulation, as amended, was deferred.

Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:100. Joints and connections.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Adult and Child Health Improvement: Kentucky Early Intervention System

902 KAR 30:141. Repeal of 902 KAR 30:140 and 30:170.

The subcommittee adjourned at 3:15 p.m. until November 9, 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 AGRICULTURE
Meeting of October 6, 2010

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture for its meeting of October 13, 2010, having been referred to the Committee on October 6, 2010, pursuant to KRS 13A.290(6):

302 KAR 20:020
302 KAR 20:050
302 KAR 20:115 & E
302 KAR 21:005 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 13, 2010 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of October 20, 2010

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health and Welfare for its meeting of October 20, 2010, having been referred to the Committee on October 6, 2010, pursuant to KRS 13A.290(6):

201 KAR 2:330
201 KAR 20:057
201 KAR 20:070
201 KAR 20:110
201 KAR 20:162
201 KAR 20:225
201 KAR 20:230
201 KAR 20:240
201 KAR 20:370
201 KAR 20:411
201 KAR 20:470

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 20, 2010 meeting, which are hereby incorporated by reference.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **E - 2**

The Locator Index lists all administrative regulations published in VOLUME 37 of the Administrative Register from July 2010 through June 2011. 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 36 are those administrative regulations that were originally published in VOLUME 36 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.

KRS Index **E - 10**

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 37 of the Administrative Register.

Technical Amendment Index **E - 18**

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 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 **E - 19**

The Subject Index is a general index of administrative regulations published in VOLUME 37 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	36 Ky.R. Page No.	Effective Date

VOLUME 36

The administrative regulations listed under VOLUME 36 are those administrative regulations that were originally published in Volume 36 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2010 bound Volumes were published.

SYMBOL KEY:
* 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.

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.)

101 KAR 2:066E		
Resubmitted	1860	1-4-10
Withdrawn		7-19-10
201 KAR 16:030E		
Resubmitted	2280	5-13-10
401 KAR 8:010E		
Resubmitted	2281	4-20-10
Replaced		(See 37 Ky.R.)
503 KAR 1:140E	1871	1-5-10
Replaced	2178	6-4-10
505 KAR 1:160E		
Resubmitted	1180	11-13-09
703 KAR 5:180E		
Resubmitted	2020-*M*	1-15-10
810 KAR 1:025E		
Resubmitted	2158	3-26-10
Replaced		(See 37 Ky.R.)
810 KAR 1:037E	2165	3-17-10
Replaced		(See 37 Ky.R.)
810 KAR 1:100E		
Resubmitted	2168	3-17-10
Replaced		(See 37 Ky.R.)
811 KAR 1:037E	2169	3-17-10
Replaced		(See 37 Ky.R.)
811 KAR 1:070E		
Resubmitted	2023-*M*	1-15-10
811 KAR 1:230		
Resubmitted	2172	3-17-10
Replaced		(See 37 Ky.R.)
811 KAR 2:130		
Resubmitted	2174	3-17-10
815 KAR 20:050E		
Resubmitted	992	10-01-09
Replaced	2067-*M*	6-4-10
906 KAR 1:180E		
Resubmitted	1184	11-13-09
Replaced	2197	6-4-10
921 KAR 2:530E		
Resubmitted	2294	5-14-10
Expired		

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 5:145		
Amended	1508	
11 KAR 12:060		
Amended	2055-*A*	7-12-2010
13 KAR 1:020		
Amended	2347	9-3-10
31 KAR 3:010		
Amended	1095	
As Amended	1434	
31 KAR 6:010		
Amended	2110-*M*	
As Amended	2176	6-4-10
101 KAR 2:066		
Amended	1963	
Withdrawn		7-19-10
102 KAR 1:160		
Amended	1966	
As Amended	2177	6-4-10
102 KAR 1:225		
Amended	1967	
Amended	2056-*A*	
As Amended	2299	
Amended	2061-*A*	
As Amended	2302	6-4-10
200 KAR 5:314		
Amended	1300	
As Amended	2177	6-4-10
200 KAR 5:315		
Amended	616	
Withdrawn	**	Date
201 KAR 10:050		
Amended	1301	
As Amended	2047-*M*	
Withdrawn		7-8-10
201 KAR 16:030		
Amended	2353	
201 KAR 20:240		
Amended	2071-*A*	6-16-10
201 KAR 20:450		
Amended	527	
201 KAR 20:490		
Amended	2073-*A*	
As Amended	2312	6-16-10
201 KAR 20:510	2402	(See 37 Ky.R.)
201 KAR 22:020		
Amended	2208	
Withdrawn		6-15-10
201 KAR 22:045		(See 37 Ky.R.)
Amended	2209	
201 KAR 22:135		(See 37 Ky.R.)
Amended	2211	
201 KAR 30:050		
Amended	152	
Amended	569	
301 KAR 1:140		(See 37 Ky.R.)
Amended	2212	
301 KAR 2:049		(See 37 Ky.R.)
Amended	2215	
301 KAR 2:132		(See 37 Ky.R.)
Amended	2075-*A*	
Amended	2335	
301 KAR 2:172		
Amended	2080-*A*	
As Amended	2314	6-3-10
301 KAR 2:178		
Amended	2082-*A*	
As Amended	2316	6-3-10
401 KAR 5:045		(See 37 Ky.R.)
Amended	2112-*M*	
401 KAR 5:070		
Amended	2114-*M*	8-5-10
401 KAR 5:075		(See 37 Ky.R.)
Amended	2119-*M*	

Regulation Number	35 Ky.R. Page No.	Effective Date
Amended	2339	
401 KAR 8:010		
Amended		
401 KAR 8:020		
Amended	2088-*A*	
As Amended	2321	6-3-10
401 KAR 8:070		
Amended	2092-*A*	
401 KAR 8:150		(See 37 Ky.R.)
Amended	2094-*A*	
401 KAR 8:200		
Amended	2097-*A*	
As Amended	2323	6-3-10
401 KAR 8:250		
Amended	2099-*A*	
As Amended	2324	
401 KAR 8:300		
Amended	2100-*A*	
As Amended	2324	6-3-10
401 KAR 8:510		
Amended	2101-*A*	
As Amended	2324	6-3-10
401 KAR 8:550		
Amended	2103-*A*	
As Amended	2325	6-3-10
401 KAR 11:010		
Amended	2094	
401 KAR 11:030		(See 37 Ky.R.)
Amended	2105-*A*	
401 KAR 47:090		(See 37 Ky.R.)
Amended	620	
401 KAR 59:015		
Amended	2355	(See 37 Ky.R.)
405 KAR 8:010		
Amended	2360	(See 37 Ky.R.)
503 KAR 1:140		
Amended	1989	
As Amended	2178	6-4-10
503 KAR 3:010		
Amended	2373	(See 37 Ky.R.)
503 KAR 3:040		
Amended	2379	(See 37 Ky.R.)
503 KAR 3:110		
Amended	2383	(See 37 Ky.R.)
601 KAR 1:200		(See 37 Ky.R.)
Amended	2220	
601 KAR 1:220	1571	
Amended	2058-*M*	
As Amended	2184	6-4-10
601 KAR 2:020		
Amended	2388	(See 37 Ky.R.)
601 KAR 12:060		
Amended	1116	
As Amended	2325	6-4-10
603 KAR 4:045		
Amended	2124-*M*	
As Amended	2184	
702 KAR 3:030		
Amended	2108-*A*	
As Amended	2326	
702 KAR 3:246		
Amended	2225	
703 KAR 5:060		
Amended	2109-*A*	(See 37 Ky.R.)
703 KAR 5:180	2144-*M*	
704 KAR 3:540	2260	(See 37 Ky.R.)
725 KAR 1:061		
Amended	2227	
Withdrawn		6-15-10
781 KAR 1:020		
Amended	2230	(See 37 Ky.R.)
781 KAR 1:030		
Amended	2232	(See 37 Ky.R.)
781 KAR 1:040		
Amended	2235	
Withdrawn		6-15-10
803 KAR 30:010		(See 37 Ky.R.)
Amended	2238	
804 KAR 11:030		
Amended	2112-*A*	
Amended	2344	
Withdrawn		7-7-10
810 KAR 1:025		
Amended	2244	(See 37 Ky.R.)
810 KAR 1:037	2261	(See 37 Ky.R.)
810 KAR 1:100	2264	(See 37 Ky.R.)
811 KAR 1:037	2265	(See 37 Ky.R.)
811 KAR 1:070		
Amended	2127-*M*	6-4-10
As Amended	2187	
811 KAR 1:230	2268	(See 37 Ky.R.)
811 KAR 2:130	2269	(See 37 Ky.R.)
815 KAR 7:070		(See 37 Ky.R.)
Amended	2251	
815 KAR 8:070	2004	
As Amended	2194	6-4-10
815 KAR 8:080	2006	
Amended	2048-*A*	
As Amended	2195	6-4-10
815 KAR 8:090	2008	
As Amended	2196	6-4-10
815 KAR 10:060		
Reprint	1857	
815 KAR 20:018	2271	(See 37 Ky.R.)
815 KAR 20:050		
Amended	1134	
As Amended	2067-*M*	6-4-10
815 KAR 20:191		
Amended	2135-*M*	
As Amended	2327	(See 37 Ky.R.)
815 KAR 2	5:080	
Amended	2114-*A*	
As Amended	2333	
900 KAR 5:020		
Amended	2255	(See 37 Ky.R.)
900 KAR 6:020		
Amended	2256	(See 37 Ky.R.)
900 KAR 6:060		
Amended	2258	(See 37 Ky.R.)
900 KAR 6:125	260	
Withdrawn		11-13-09
902 KAR 20:400	1572	
Amended	2049-*A*	(See 37 Ky.R.)
906 KAR 1:180	1403	
Amended	2103-*M*	
As Amended	2197	6-4-10
910 KAR 1:240		
Amended	2391	(See 37 Ky.R.)
910 KAR 1:260		
Amended	1997	
As Amended	2201	6-4-10
921 KAR 1:410		
Amended	2395	(See 37 Ky.R.)

Regulation Number	35 Ky.R. Page No.	Effective Date

VOLUME 37

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.)

31 KAR 4:130E	4	6-15-10
31 KAR 4:140E	6	6-15-10
101 KAR 2:210E	916	9-15-10
101 KAR 5:015E	211	7-13-10
Withdrawn		8-13-10
Resubmitted	664	8-13-10
102 KAR 1:320E	212	7-15-10
102 KAR 1:330E	215	7-15-10
105 KAR 1:190E	217	7-15-10
201 KAR 8:007E	224	7-15-10
201 KAR 8:390E	225	7-15-10
201 KAR 8:500E	228	7-15-10
201 KAR 8:510E	231	7-15-10
201 KAR 8:520E	233	7-15-10
201 KAR 8:530E	235	7-15-10
201 KAR 8:540E	239	7-15-10
201 KAR 8:560E	241	7-15-10
201 KAR 8:570E	245	7-15-10
Withdrawn		10-15-00
201 KAR 8:580E	248	7-15-10
Withdrawn		9-14-10
201 KAR 39:050E	250	6-16-10
301 KAR 2:221E	1158	10-15-10
301 KAR 2:222E	1160	10-15-10
301 KAR 2:225E	917	8-18-10
302 KAR 20:115E	252	7-2-10
302 KAR 21:005E	254	7-2-10
405 KAR 8:010E		(See 36 Ky.R.)
Replaced	689	9-2-10
503 KAR 1:110E	9	6-10-10
601 KAR 1:018E	666	8-12-10
702 KAR 7:130E	255	6-23-10
803 KAR 25:091E	920	9-15-10
810 KAR 1:009E	13	6-15-10
815 KAR 1:025E		(See 36 Ky.R.)
Replaced	363	9-3-10
810 KAR 1:026E	18	6-15-10
810 KAR 1:037E		(See 36 Ky.R.)
Replaced	369	9-3-10
810 KAR 1:100E		(See 36 Ky.R.)
Replaced	371	9-3-10
810 KAR 1:110E	923	9-15-10
811 KAR 1:037E		(See 36 Ky.R.)
Replaced	372	9-3-10
811 KAR 1:230		(See 36 Ky R.)
Replaced	372	9-3-10
811 KAR 1:240E	927	9-15-10
811 KAR 2:150E	931	9-15-10
811 KAR 2:020E	22	6-15-10
811 KAR 2:130E		(See 36 Ky.R.)
Replaced	374	9-3-10
811 KAR 2:140E	30	6-15-10
902 KAR 20:410E	935	9-1-10
902 KAR 30:001E	257	7-15-10
902 KAR 30:110E	260	7-15-10
902 KAR 30:120E	265	7-15-10
902 KAR 30:130E	274	7-15-10
902 KAR 30:150E	279	7-15-10
902 KAR 30:160E	283	7-15-10
902 KAR 30:180E	286	7-15-10
902 KAR 30:200	289	7-15-10
902 KAR 45:005E	939	9-8-10
Withdrawn		10-18-10
902 KAR 45:110E	942	9-8-10
Withdrawn		10-18-10
907 KAR 1:012E	295	7-1-10
907 KAR 1:014E	298	7-1-10
907 KAR 1:015E	302	7-1-10
907 KAR 1:019E	305	7-1-10
907 KAR 1:479E	312	7-1-10
907 KAR 1:677E	318	7-1-10
907 KAR 1:825E	323	7-1-10
907 KAR 3:090E	333	7-1-10
907 KAR 3:100E	348	7-1-10
907 KAR 3:215E	1164	10-1-10
907 KAR 5:005E	352	7-1-10
921 KAR 2:040E	672	7-23-10
921 KAR 3:030E	674	7-23-10

ORDINARY ADMINISTRATIVE REGULATIONS:

4 KAR 1:010	872	
As Amended	1168	
4 KAR 1:020	873	
4 KAR 1:030	875	
4 KAR 1:040	877	
As Amended	1168	
11 KAR 3:100		
Amended	71	
11 KAR 5:145		
Amended	84	
16 KAR 2:150		
Amended	1317	
16 KAR 6:010		
Amended	86	
As Amended	678	
16 KAR 6:020		
Amendment	1318	
16 KAR 6:030		
Amended	89	
As Amended	680	
31 KAR 4:130		
Amended	91	
As Amended	680	
31 KAR 4:140		
Amended	94	
As Amended	682	
40 KAR 2:350		
Amended	96	
Amended	741	
101 KAR 2:210		
Amended	1000	
101 KAR 5:015	605	
Withdrawn		8-13-10
Resubmitted	879	
102 KAR 1:225		
Amended	1322	
102 KAR 1:230		
Amended	1323	
102 KAR 1:245		
Amended	1327	
102 KAR 1:320	606	
Amended	989	
As Amended	1170	
102 KAR 1:330	609	
As Amended	1172	
103 KAR 3:020		
Amended	755	
As Amended	1172	
103 KAR 3:050		
Amended	760	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date
103 KAR 15:180	1107	
103 KAR 18:070		
Amended	409	
As Amended	1177	
103 KAR 31:102	611	
As Amended	945	
105 KAR 1:190		
Amended	410	
As Amended	945	
105 KAR 1:370		
Amended	99	
As Amended	683	
106 KAR 2:020		
Amended	417	
As Amended	1177	
109 KAR 15:020		
Amended	767	
As Amended	1178	
200 KAR 5:400	1109	
200 KAR 5:410	1111	
201 KAR 2:165		
Amended	1328	
201 KAR 2:330	612	
As Amended	951	
201 KAR 7:075		
Amended	1001	
201 KAR 17:030		
Amended	1003	
201 KAR 8:006		
Repealed	224	7-15-10
201 KAR 8:015		
Repealed	224	7-15-10
201 KAR 8:070		
Repealed	224	7-15-10
201 KAR 8:130		
Repealed	224	7-15-10
201 KAR 8:135		
Repealed	224	7-15-10
201 KAR 8:140		
Repealed	224	7-15-10
201 KAR 8:150		
Repealed	224	7-15-10
201 KAR 8:160		
Repealed	224	7-15-10
201 KAR 8:170		
Repealed	224	7-15-10
201 KAR 8:180		
Repealed	224	7-15-10
201 KAR 8:185		
Repealed	224	7-15-10
201 KAR 8:190		
Repealed	224	7-15-10
201 KAR 8:220		
Repealed	224	7-15-10
201 KAR 8:225		
Repealed	224	7-15-10
201 KAR 8:230		
Repealed	224	7-15-10
201 KAR 8:240		
Repealed	224	7-15-10
201 KAR 8:250		
Repealed	224	7-15-10
201 KAR 8:260		
Repealed	224	7-15-10
201 KAR 8:265		
Repealed	224	7-15-10
201 KAR 8:270		
Repealed	224	7-15-10
201 KAR 8:277		
Repealed	224	7-15-10
201 KAR 8:280		
Repealed	224	7-15-10
201 KAR 8:290		
Repealed	224	7-15-10
201 KAR 8:310		
Repealed	224	7-15-10
201 KAR 8:320		
Repealed	224	7-15-10
201 KAR 8:330		
Repealed	224	7-15-10
201 KAR 8:340		
Repealed	224	7-15-10
201 KAR 8:345		
Repealed	224	7-15-10
201 KAR 8:350		
Repealed	224	7-15-10
201 KAR 8:355		
Repealed	224	7-15-10
201 KAR 8:400		
Repealed	224	7-15-10
201 KAR 8:420		
Repealed	224	7-15-10
201 KAR 8:430		
Repealed	224	7-15-10
201 KAR 8:440		
Repealed	224	7-15-10
201 KAR 8:450		
Repealed	224	7-15-10
201 KAR 8:460		
Repealed	224	7-15-10
201 KAR 8:470		
Repealed	224	7-15-10
201 KAR 8:480		
Repealed	224	7-15-10
201 KAR 8:500	614	
201 KAR 8:510	616	
201 KAR 8:520	618	
201 KAR 8:530	620	
201 KAR 8:540	624	
201 KAR 8:560	626	
201 KAR 8:570	630	
Withdrawn		10-14-10
201 KAR 8:580	633	
Withdrawn		9-14-10
201 KAR 9:005		
Repealed	194	9-15-10
201 KAR 9:006*(r)*	194	9-15-10
201 KAR 18:150		
Amended	768	
As Amended	1178	
201 KAR 20:056		
Amended	419	
Amended	1215	
201 KAR 20:057		
Amended	421	
201 KAR 20:061	635	
201 KAR 20:062	637	
Amended	1217	
201 KAR 20:070		
Amended	423	
201 KAR 20:110		
Amended	426	
201 KAR 20:162		
Amended	428	
201 KAR 20:215		
Notice		
201 KAR 20:225		
Amended	429	
201 KAR 20:230		
Amended	431	
As Amended	952	
201 KAR 20:240		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date
Amended	432	
201 KAR 20:370		
Amended	434	
201 KAR 20:411		
Amended	436	
201 KAR 20:470		
Amended	438	
201 KAR 20:510		(See 36 Ky.R.)
As Amended	357	8-18-10
201 KAR 22:020		
Amended	775	
201 KAR 22:045		(See 36 Ky.R.)
As Amended	34	7-21-10
201 KAR 22:053		
Amended	776	
As Amended	1184	
201 KAR 22:135		(See 36 Ky.R.)
As Amended	35	7-21-10
201 KAR 22:070		
Amended	779	
201 KAR 23:020		
Amended	1330	
201 KAR 23:050		
Amended	1331	
201 KAR 23:070		
Amended	1332	
201 KAR 23:075		
Amended	1335	
201 KAR 28:010		
Amended	1005	
201 KAR 28:130		
Amended	1006	
201 KAR 30:040		
Amended	101	
201 KAR 34:020		
Amended	443	
201 KAR 36:060		
Amended	780	
201 KAR 36:070		
Amended	783	
201 KAR 39:050		
Amended	444	
201 KAR 40:040		
Amended	784	
201 KAR 40:050		
Amended	786	
As Amended	1186	
201 KAR 40:060		
Amended	787	
As Amended	1187	
201 KAR 40:070		
Amended	789	
As Amended	1188	
201 KAR 40:080		
Amended	791	
As Amended	1189	
201 KAR 40:100		
Amended	794	
201 KAR 41:100	1112	
201 KAR 42:010		
Amended	1009	
201 KAR 42:020		
Amended	1011	
201 KAR 42:030		
Amended	1012	
201 KAR 42:035		
Amended	1013	
201 KAR 42:040		
Amended	1015	
Withdrawn		9-15-10
201 KAR 42:050		
Amended	1016	
201 KAR 42:060		
Amended	1018	
201 KAR 42:070		
Amended	1020	
201 KAR 42:080	1113	
201 KAR 42:040		
Amended	796	
Withdrawn		9-14-10
201 KAR 42:110		
Amended	1022	
300 KAR 2:040	195	
As A		mended
301 KAR 1:010		
Amended	446	
As Amended	952	
301 KAR 1:140		(See 36 Ky.R.)
As Amended	35	8-5-10
301 KAR 1:201		
Amended	102	9-2-10
301 KAR 1:410		
Amended	107	
Amended	744	
301 KAR 2:049		(See 36 Ky.R.)
As Amended	37	8-5-10
301 KAR 2:082		
Amended	1024	
301 KAR 2:132		(See 36 Ky.R.)
As Amended	41	8-5-10
301 KAR 2:221		
Amended	1338	
301 KAR 2:222		
Amended	1341	
301 KAR 2:225		
Amended	1029	
301 KAR 2:251		
Amended	797	
301 KAR 4:050		
Amended	1345	
302 KAR 20:020		
Amended	448	
As Amended	953	
302 KAR 20:050		
Amended	450	
As Amended	954	
302 KAR 20:065		
Amended	1031	
302 KAR 20:066		
Amended	1035	
302 KAR 20:115		
Amendment	451	
As Amended	955	
302 KAR 21:005	642	
As Amended	955	
302 KAR 29:010		
Amended	112	
As Amended	684	
302 KAR 29:050		
Amended	114	
As Amended	686	
302 KAR 29:060		
Amended	118	
302 KAR 34:020		
Amended	800	Withdrawn
Withdrawn		
304 KAR 1:040		
Amended	121	
Withdrawn		8-18-10
307 KAR 1:060	643	
As Amended	956	
400 KAR 2:090		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date
Amended	1346	
401 KAR 5:045		(See 36 Ky.R.)
As Amended	44	8-5-10
401 KAR 5:075		(See 36 Ky.R.)
As Amended	45	8-5-10
401 KAR 8:100		
Amended	123	
Amended	991	
401 KAR 8:150		(See 36 Ky.R.)
As Amended	50	8-5-10
401 KAR 11:030		(See 36 Ky.R.)
As Amended	51	8-5-10
401 KAR 47:090		(See 36 Ky.R.)
As Amended	53	8-5-10
401 KAR 49:080		
Amended	1349	
401 KAR 51:001		
Amended	452	
Amended	1222	
401 KAR 52:001		
Amended	469	
Amended	1245	
401 KAR 59:015		(See 36 Ky.R.)
Amended	748	
As Amended	957	
405 KAR 8:010		(See 36 Ky.R.)
Amended	390	
As Amended	689	9-2-10
500 KAR 2:020		
Amended	474	
As Amended	961	
500 KAR 3:020		
Amended	478	
As Amended	964	
501 KAR 6:020		
Amended	1043	
501 KAR 6:090		
Amended	1045	
502 KAR 31:020		
Amended	1047	
502 KAR 32:010		
Amended	482	
As Amended	966	
503 KAR 1:110		(See 36 Ky.R.)
Amended	127	
As Amended	702	
503 KAR 1:170		
Amended	801	
As Amended	1190	
503 KAR 3:010		(See 36 Ky.R.)
As Amended	705	
503 KAR 3:040		(See 36 Ky.R.)
As Amended	709	
503 KAR 3:110		(See 36 Ky.R.)
As Amended	713	
601 KAR 1:018		
Amended	808	
601 KAR 1:200		(See 36 Ky.R.)
As Amended	56	8-6-10
601 KAR 1:201		
Amended	131	
As Amended	717	
601 KAR 2:020		(See 36 Ky.R.)
As Amended	357	8-10-10
601 KAR 9:015		
Amended	484	
As Amended	968	
601 KAR 9:140		
Amended	1354	
601 KAR 9:205	1116	
601 KAR 14:030	645	
As Amended	968	
702 KAR 5:110		
Amended	135	
702 KAR 7:130		
Amended	485	
As Amended	969	
703 KAR 5:060		(See 36 Ky.R.)
As Amended	359	
703 KAR 5:171	1361	
703 KAR 5:190	1362	
704 KAR 3:540		(See 36 Ky.R.)
As Amended	60	7-12-10
704 KAR 3:303		
Amended	137	
Withdrawn	*	8-15-10
Amended	1015	
704 KAR 3:305		
Amended	138	
725 KAR 1:061		
Amended	487	
As Amended	969	
781 KAR 1:020		(See 36 Ky.R.)
As Amended	360	9-3-10
781 KAR 1:030		(See 36 Ky.R.)
As Amended	362	9-3-10
781 KAR 1:040		
Amended	489	
Amended	995	
787 KAR 1:090		
Amended	814	
As Amended	1196	
787 KAR 1:320		
Amended	1051	
787 KAR 2:020		
Amended	141	
As Amended	719	
803 KAR 2:300		
Amended	144	
As Amended	721	
803 KAR 2:306		
Amended	146	
As Amended	721	
803 KAR 2:308		
Amended	149	
803 KAR 2:316		
Amended	151	
803 KAR 2:318		
Amended	1053	
803 KAR 2:320		
Amended	153	
As Amended	722	
803 KAR 2:400		
Amended	1055	
803 KAR 2:402		
Amended	1057	
803 KAR 2:411		
Amended	1059	
803 KAR 2:412		
Amended	1061	
803 KAR 2:413		
Amended	1065	
803 KAR 2:414		
Amended	1067	
803 KAR 2:417		
Amended	1069	
803 KAR 2:418		
Amended	1071	
803 KAR 2:419		
Amended	1073	
803 KAR 2:421		
Amended	1075	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date
803 KAR 2:423		
Amended	1076	
803 KAR 2:430		
803 KAR 2:425		
Amended	159	
803 KAR 2:430	1117	
803 KAR 2:500		
Amended	161	
803 KAR 2:505	1118	
803 KAR 2:550	1120	
803 KAR 25:089		
Amended	1078	
803 KAR 25:091		
Amended	1080	
803 KAR 30:010		(See 36 Ky.R.)
As Amended	61	8-6-10
805 KAR 3:100		
Amended	1083	
805 KAR 7:020		
Amended	164	
As Amended	727	9-2-10
805 KAR 8:060		
Amended	165	
As Amended	727	9-2-10
806 KAR 9:001		
Amended	493	
As Amended	971	
806 KAR 9:030		
Amended	495	
As Amended	1197	
806 KAR 9:060		
Amended	496	
As Amended	972	
806 KAR 9:070		
Amended	498	
As Amended	972	
806 KAR 9:121	646	
806 KAR 12:150		
Amended	1084	
806 KAR 12:170		
Amended	1087	
806 KAR 15:090	881	
806 KAR 17:180		
Amended	500	
806 KAR 17:320		
Amended	816	
806 KAR 17:540		
Amended	502	
806 KAR 17:545		
As Amended	973	
Amended	504	
806 KAR 17:555		
Amended	507	
806 KAR 46:011*(r)*	1122	
806 KAR 46:040	1123	
806 KAR 46:050	648	
As Amended	976	
808 KAR 12:002		
Amended	822	
As Amended	1197	
808 KAR 12:020		
Amended	823	
Withdrawn		10-11-2010
808 KAR 12:021	883	
As Amended	1198	
808 KAR 12:022	886	
As Amended	1200	
808 KAR 12:023	887	
As Amended	1200	
808 KAR 12:024	888	
As Amended	1201	
808 KAR 12:026	889	
As Amended	1201	
808 KAR 12:066	891	
808 KAR 12:076	892	
808 KAR 12:086	893	
808 KAR 12:096	894	
810 KAR 1:001		
Amended	825	
810 KAR 1:009		
Amended	169	
As Amended	1202	
810 KAR 1:011		
Amended		
810 KAR 1:025	363	9-3-10
810 KAR 1:026		
Amended	174	
As Amended	1205	
810 KAR 1:037		(See 36 Ky.R.)
As Amended	369	9-3-10
810 KAR 1:100		(See 36 Ky.R.)
As Amended	371	9-3-10
810 KAR 1:110	1125	
810 KAR 1:120	895	
810 KAR 1:130	1128	
811 KAR 1:005		
Amended	834	
811 KAR 1:037		(See 36 Ky.R.)
As Amended	372	9-3-10
811 KAR 1:100		(See 36 Ky.R.)
As Amended	371	9-3-10
811 KAR 1:125		
Amended	837	
811 KAR 1:220		
Amended	1089	
811 KAR 1:230		(See 36 Ky.R.)
As Amended	372	9-3-10
811 KAR 1:240	1130	
811 KAR 1:250	898	
811 KAR 1:260	1134	
811 KAR 2:010		
Amended	847	
811 KAR 2:020		
Amended	178	
As Amended	977	
811 KAR 2:060		
Amended	851	
811 KAR 2:150	1136	
811 KAR 2:160	900	
811 KAR 2:170	1140	
811 KAR 2:130		(See 36 Ky.R.)
As Amended	374	9-3-10
811 KAR 2:140	196	
815 KAR 7:070		(See 36 Ky.R.)
As Amended	65	8-6-10
815 KAR 7:110		
Amended	859	
As Amended	1209	
815 KAR 7:120		
Amended	1092	
815 KAR 7:125		
Amended	1095	
815 KAR 8:035	903	
As Amended	1211	
815 KAR 8:050		
Amended	862	
As Amended	1211	
815 KAR 8:100	199	
As Amended	730	
815 KAR 20:018		(See 36 Ky.R.)
As Amended	68	8-6-10
815 KAR 20:020		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date
Amended	186	
As Amended	732	
815 KAR 20:032		
Amended	864	
As Amended	1212	
815 KAR 20:191		(See 36 Ky.R.)
As Amended	375	
815 KAR 20:100		
Amended	191	
815 KAR 35:100		
Amended	1356	
900 KAR 5:020		(See 36 Ky.R.)
Amended	403	
As Amended	735	9-15-10
900 KAR 6:020		(See 36 Ky.R.)
As Amended	736	9-15-10
900 KAR 6:060		(See 36 Ky.R.)
As Amended	380	8-18-10
900 KAR 7:030		
Amended.	1097	
902 KAR 2:060		
Amendment	1101	
902 KAR 20:400		(See 36 Ky.R.)
As Amended	381	8-18-10
902 KAR 20:410	1142	
902 KAR 30:001		
Amended	510	
Amended	1251	
902 KAR 30:110		
Amended	512	
Amended	1253	
902 KAR 30:120		
Amended	518	
Amended	1259	
902 KAR 30:130		
Amended	526	
Amended	1267	
902 KAR 30:141 *(r)*	650	
902 KAR 30:150		
Amended	532	
Amended	1272	
902 KAR 30:160		
Amended	536	
Amended	1276	
902 KAR 30:180		
Amended	538	
Amended	1278	
902 KAR 30:200		
Amended	542	
Amended	1282	
907 KAR 1:012		
Amended	548	
907 KAR 1:014		
Amended	551	
As Amended	984	
907 KAR 1:015		
Amended	554	
907 KAR 1:019		
Amended	557	
Amended	1288	
907 KAR 1:479		
Amended	564	
907 KAR 1:677		
Amended	571	
Amended	1295	
907 KAR 1:825		
Amended	576	
907 KAR 3:090		
Amended	585	
Amended	1301	
907 KAR 3:100		
Amended	601	
907 KAR 3:215	1364	
907 KAR 5:005	651	
As Amended	986	
908 KAR 2:230	1366	
908 KAR 3:050		
Amended	1358	
910 KAR 1:240		(See 36 Ky.R.)
Amended	404	
As Amended	736	
921 KAR 1:410		(See 36 Ky.R.)
As Amended	385	818
921 KAR 2:040		
Amended	866	
As Amended	1213	
921 KAR 3:030		
Amended	868	

SYMBOL KEY:

* 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.

KRS INDEX

KRS SECTION	REGULATION
6.500	4 KAR 1:010
	4 KAR 1:040
6.505	4 KAR 1:010
	4 KAR 1:040
6.515	4 KAR 1:010
	4 KAR 1:020
	4 KAR 1:040
6.520	4 KAR 1:010
	4 KAR 1:040
6.525	4 KAR 1:020
6.521	4 KAR 1:010
	4 KAR 1:040
6.525	4 KAR 1:010
	4 KAR 1:020
	4 KAR 1:040
6.530	4 KAR 1:010
	4 KAR 1:040
6.535	4 KAR 1:010
	4 KAR 1:040
6.575	4 KAR 1:010
	4 KAR 1:040
6.577	4 KAR 1:010
	4 KAR 1:040
11A	105 KAR 1:370
13B	900 KAR 7:030
18A.030	101 KAR 2:210
18A.095	105 KAR 1:370
18A.225	101 KAR 2:210
18A.2254	101 KAR 2:210
13B	201 KAR 20:161
	201 KAR 20:162
	907 KAR 1:019
13B.140	907 KAR 1:825
15A.160	500 KAR 3:020
45A.490-45A.494	200 KAR 5:400
45A.050	200 KAR 5:400
45A.070	200 KAR 5:400
45A.090	200 KAR 5:400
45A.180	200 KAR 5:400
45A.182	200 KAR 5:400
45A.365	200 KAR 5:400
45A.370	200 KAR 5:400
45A.375	200 KAR 5:400
45A.465	200 KAR 5:410
45A.470	200 KAR 5:410
45A.695	200 KAR 5:400
45A.745	200 KAR 5:400
45A.825	200 KAR 5:400
45A.853	200 KAR 5:400
15.310	503 KAR 1:170
16.505	105 KAR 1:190
16.645	105 KAR 1:190
21.345	4 KAR 1:010
	4 KAR 1:040
21.347	4 KAR 1:010
	4 KAR 1:040
21.350	4 KAR 1:010
	4 KAR 1:040
21.357	4 KAR 1:010
	4 KAR 1:040
21.360	4 KAR 1:010
	4 KAR 1:040
21.370	4 KAR 1:010
	4 KAR 1:020
	4 KAR 1:040
21.375	4 KAR 1:010
	4 KAR 1:040
21.380	4 KAR 1:010
	4 KAR 1:040
21.385	4 KAR 1:010
	4 KAR 1:020
	4 KAR 1:040
21.400	4 KAR 1:010

KRS SECTION	REGULATION
	4 KAR 1:040
21.405	4 KAR 1:010
	4 KAR 1:040
21.410	4 KAR 1:010
	4 KAR 1:040
21.415	4 KAR 1:010
	4 KAR 1:040
21.420	4 KAR 1:010
	4 KAR 1:040
21.425	4 KAR 1:010
	4 KAR 1:040
21.427	4 KAR 1:010
	4 KAR 1:040
21.440	4 KAR 1:010
	4 KAR 1:040
21.450	4 KAR 1:010
	4 KAR 1:040
21.460	4 KAR 1:010
	4 KAR 1:020
	4 KAR 1:040
21.470	4 KAR 1:010
	4 KAR 1:040
21.480	4 KAR 1:010
	4 KAR 1:040
21.510	4 KAR 1:010
	4 KAR 1:040
21.525	4 KAR 1:010
	4 KAR 1:040
21.530	4 KAR 1:010
	4 KAR 1:040
21.540	4 KAR 1:010
	4 KAR 1:020
	4 KAR 1:030
	4 KAR 1:040
21.550	4 KAR 1:010
	4 KAR 1:040
21.560	4 KAR 1:010
	4 KAR 1:040
21.570	4 KAR 1:010
	4 KAR 1:040
217B	302 KAR 29:010
	302 KAR 29:060
217B.190	302 KAR 29:050
217B.515	302 KAR 29:050
217B.520	302 KAR 29:050
217B.525	302 KAR 29:050
217B.545	302 KAR 29:050
218A	105 KAR 1:370
196	501 KAR 6:020
	501 KAR 6:090
197	501 KAR 6:020
	501 KAR 6:090
257	302 KAR 20:065
439	501 KAR 6:020
	501 KAR 6:090
15.330	503 KAR 1:110
15.386	503 KAR 1:110
15.404	503 KAR 1:110
15.440	503 KAR 1:110
17.170	502 KAR 32:010
17.175	502 KAR 32:010
17.500-17.540	502 KAR 31:020
36.470	106 KAR 2:020
36.474	105 KAR 1:190
	106 KAR 2:020
36.476	106 KAR 2:020
42.470	103 KAR 3:050
42.495	109 KAR 15:020
43.070	109 KAR 15:020
46.010	109 KAR 15:020
46.020	109 KAR 15:020
48.010	401 KAR 51:001
61.394	105 KAR 1:370

KRS INDEX

KRS SECTION	REGULATION
61.510	105 KAR 1:190
61.645	105 KAR 1:370
61.820	601 KAR 14:030
61.826	601 KAR 14:030
61.870-61.884	103 KAR 3:020
	103 KAR 3:050
61.874	201 KAR 20:240
61.900-61.930	500 KAR 2:020
64.810	109 KAR 15:020
64.840	109 KAR 15:020
64.850	109 KAR 15:020
65.117	109 KAR 15:020
65.900-65.925	109 KAR 15:020
65.944	109 KAR 15:020
66.045	109 KAR 15:020
66.480	109 KAR 15:020
67.075-67.077	109 KAR 15:020
68.020	109 KAR 15:020
68.210	109 KAR 15:020
68.245	109 KAR 15:020
68.250	109 KAR 15:020
68.275	109 KAR 15:020
68.280	109 KAR 15:020
68.300	109 KAR 15:020
78.510	105 KAR 1:190
78.545	105 KAR 1:190
116.045	31 KAR 4:130
	31 KAR 4:140
116.048	921 KAR 3:030
116.0452	31 KAR 4:130
116.995	31 KAR 4:140
117.079	31 KAR 4:130
	31 KAR 4:140
117.085	31 KAR 4:130
	31 KAR 4:140
117.086	31 KAR 4:130
	31 KAR 4:140
117.995	31 KAR 4:140
119.265	31 KAR 4:140
131.00-131.130	103 KAR 3:020
	103 KAR 3:050
131.50-131.240	103 KAR 3:020
131.110	601 KAR 1:201
131.155	103 KAR 3:050
131.170	103 KAR 3:050
131.181	103 KAR 3:050
131.183	103 KAR 3:050
131.190	103 KAR 3:050
131.340	103 KAR 3:050
131.500	103 KAR 3:050
131.510	103 KAR 3:050
131.540	103 KAR 3:050
132.010	109 KAR 15:020
	815 KAR 7:120
	815 KAR 7:125
132.020	103 KAR 3:050
132.130-132.180	103 KAR 3:050
132.190	103 KAR 3:050
132.200	103 KAR 3:050
132.220-132.270	103 KAR 3:050
132.290-132.320	103 KAR 3:050
132.450	103 KAR 3:050
132.487	103 KAR 3:050
132.510	103 KAR 3:050
132.820	103 KAR 3:050
132.990	103 KAR 3:050
132.0225	109 KAR 15:020
132.585	109 KAR 15:020
133.045	103 KAR 3:050
133.110	103 KAR 3:050
133.120	103 KAR 3:050
133.130	103 KAR 3:050
133.240	103 KAR 3:050
134.420	103 KAR 3:050
134.580	103 KAR 3:050
134.590	103 KAR 3:050
134.800-134.830	103 KAR 3:050
135.010	103 KAR 3:050
135.020	103 KAR 3:050
135.050	103 KAR 3:050
136.020	103 KAR 3:050
136.050	103 KAR 3:050
136.070	103 KAR 3:050
136.071	103 KAR 3:050
136.0704	103 KAR 3:050
136.090	103 KAR 3:050
136.100	103 KAR 3:050
136.115-136.180	103 KAR 3:050
136.1873	103 KAR 3:050
136.310-136.335	103 KAR 3:050
136.320	103 KAR 15:180
136.330	103 KAR 15:180
136.340	103 KAR 15:180
136.350	103 KAR 15:180
136.370	103 KAR 15:180
136.377	103 KAR 3:050
136.390	103 KAR 15:180
136.392	103 KAR 3:050
136.545	103 KAR 3:050
136.575	103 KAR 3:050
136.600-136.660	103 KAR 3:020
	103 KAR 3:050
137.130	103 KAR 3:050
137.160	103 KAR 3:050
138.165	103 KAR 3:050
138.195	103 KAR 3:050
138.210-138.885	103 KAR 3:050
138.227	601 KAR 1:201
138.655-138.7291	601 KAR 1:201
139.010	103 KAR 31:102
139.010-139.795	103 KAR 3:020
139.200	103 KAR 31:102
139.533	103 KAR 31:102
140.010-140.360	103 KAR 3:050
141.010	103 KAR 18:070
141.020	103 KAR 15:180
	103 KAR 18:070
141.040	103 KAR 15:180
141.310	103 KAR 18:070
141.315	103 KAR 18:070
141.432	103 KAR 15:180
141.433	103 KAR 15:180
141.434	103 KAR 15:180
141.0401	103 KAR 15:180
142.010-142.404	103 KAR 3:050
143.030	103 KAR 3:050
143.037	103 KAR 3:050
143.040	103 KAR 3:050
143.050	103 KAR 3:050
143.060	103 KAR 3:050
143.085	103 KAR 3:050
143.990	103 KAR 3:050
143A.010	103 KAR 3:050
143A.030	103 KAR 3:050
143A.035	103 KAR 3:050
143A.037	103 KAR 3:050
143A.080	103 KAR 3:050
143A.090	103 KAR 3:050
143A.100	103 KAR 3:050
143A.991	103 KAR 3:050
144.132	103 KAR 3:020
144.137	103 KAR 3:020
146.410	400 KAR 2:090
146.440	400 KAR 2:090
148.544	300 KAR 2:040
149.590	109 KAR 15:020

KRS INDEX

KRS SECTION	REGULATION
150.010	301 KAR 1:201
	301 KAR 1:410
	301 KAR 2:082
	301 KAR 2:221
	301 KAR 2:222
	301 KAR 4:050
150.015	301 KAR 2:082
	301 KAR 4:050
150.025	301 KAR 1:010
	301 KAR 1:410
	301 KAR 2:221
150.120	301 KAR 1:410
150.170	301 KAR 1:201
	301 KAR 1:410
	301 KAR 2:251
150.175	301 KAR 1:201
	301 KAR 1:410
150.180	301 KAR 2:251
150.235	301 KAR 1:410
150.305	301 KAR 2:082
	301 KAR 2:221
	301 KAR 2:222
150.320	301 KAR 2:082
150.330	301 KAR 2:221
	301 KAR 2:222
	301 KAR 2:225
150.340	301 KAR 1:201
	301 KAR 2:221
	301 KAR 2:222
	301 KAR 2:225
150.360	301 KAR 1:410
	301 KAR 2:251
150.370	301 KAR 1:410
	301 KAR 2:251
150.399	301 KAR 2:251
150.400	301 KAR 2:251
150.415	301 KAR 2:251
150.416	301 KAR 2:251
150.440	301 KAR 1:410
150.445	301 KAR 1:410
150.600	301 KAR 4:050
150.603	301 KAR 2:225
150.620	301 KAR 1:410
150.720	302 KAR 20:066
150.990	301 KAR 1:201
	301 KAR 1:410
	301 KAR 2:082
	301 KAR 2:221
	301 KAR 2:222
	301 KAR 2:251
151B.190	781 KAR 1:040
151B.280	787 KAR 2:020
151.634	401 KAR 8:100
154.20-33	307 KAR 1:060
154.20-206	103 KAR 3:020
154.22-050-154.22.070	103 KAR 3:050
154.23-010	103 KAR 3:050
154.24-110	103 KAR 3:050
154.24-130	103 KAR 3:050
154.26-090	103 KAR 3:050
154.28-090	103 KAR 3:050
154.34-0101	103 KAR 3:050
155.170	103 KAR 3:050
154.60-010-154.60-30	307 KAR 1:060
156.070	704 KAR 3:303
156.160	704 KAR 3:303
	704 KAR 3:305
157.320	702 KAR 7:130
157.350	702 KAR 7:130
157.360	702 KAR 7:130
157.370	702 KAR 5:110
	702 KAR 7:130
158.035	902 KAR 2:060
158.645	704 KAR 3:305
158.6451	704 KAR 3:303
	704 KAR 3:305
158.782	703 KAR 5:171
	703 KAR 5:190
158.6455	703 KAR 5:171
	703 KAR 5:190
160.290	704 KAR 3:303
160.303	200 KAR 5:400
160.613-160.617	103 KAR 3:020
	103 KAR 3:050
161.020	16 KAR 2:150
	16 KAR 6:010
	16 KAR 6:020
	16 KAR 6:030
161.027	16 KAR 6:030
161.028	16 KAR 2:150
	16 KAR 6:010
	16 KAR 6:020
161.030	16 KAR 2:150
	16 KAR 6:010
	16 KAR 6:020
	16 KAR 6:030
161.220-161.990	102 KAR 1:245
161.310	105 KAR 1:370
161.585	102 KAR 1:330
161.611	102 KAR 1:230
161.700	102 KAR 1:320
161.716	102 KAR 1:225
162.070	200 KAR 5:400
164A.575	200 KAR 5:400
164A.590	200 KAR 5:400
164.357	105 KAR 1:370
164.744	11 KAR 3:100
	11 KAR 5:145
164.748	11 KAR 3:100
164.753	11 KAR 3:100
	11 KAR 5:145
164.772	201 KAR 22:020
	201 KAR 20:225
164.7535	11 KAR 5:145
164.7889	11 KAR 5:145
165A.330	201 KAR 40:040
	201 KAR 40:050
	201 KAR 40:060
	201 KAR 40:070
	201 KAR 40:080
	201 KAR 40:100
165A.350	201 KAR 40:070
165A.370	201 KAR 40:040
	201 KAR 40:050
	201 KAR 40:060
	201 KAR 40:070
	201 KAR 40:080
	201 KAR 40:100
165A.450	201 KAR 40:050
165A.460	201 KAR 40:040
165A.465	201 KAR 40:050
	201 KAR 40:070
165A.470	201 KAR 40:050
	201 KAR 40:070
165A.475	201 KAR 40:050
	201 KAR 40:070
165A.480	201 KAR 40:050
	201 KAR 40:070
165A.485	201 KAR 40:060
	201 KAR 40:070
165.500	201 KAR 40:080
165A.510	201 KAR 40:040
	201 KAR 40:050
	201 KAR 40:060
	201 KAR 40:080
	201 KAR 40:100

KRS INDEX

KRS SECTION	REGULATION
171.420	725 KAR 1:061
171.450	725 KAR 1:061
174.120	601 KAR 14:030
174.125	601 KAR 14:030
175.450	601 KAR 1:018
176.010	200 KAR 5:400
176.082	200 KAR 5:400
177.390-177.570	601 KAR 1:018
177.9771	601 KAR 1:018
186A.055	601 KAR 9:205
186A.070	601 KAR 9:205
186A.074	601 KAR 9:205
186A.105	601 KAR 9:140
186A.130	601 KAR 9:205
186A.165	601 KAR 9:205
186A.170	601 KAR 9:205
186A.195	601 KAR 9:205
186A.215	601 KAR 9:205
186A.245	601 KAR 9:205
186.010	601 KAR 1:018
	601 KAR 9:205
186.020	601 KAR 9:205
186.050	601 KAR 1:018
186.070	601 KAR 9:015
	601 KAR 9:140
186.100	601 KAR 9:140
186.650	601 KAR 1:201
189.221	601 KAR 1:018
189.222	601 KAR 1:018
189.270	601 KAR 1:018
189.2715	601 KAR 1:018
189.2717	601 KAR 1:018
190.010	601 KAR 9:015
190.030	601 KAR 9:140
194A.010	907 KAR 3:215
194A.030	907 KAR 3:215
194A.050	907 KAR 3:215
194A.540	201 KAR 20:070
	201 KAR 20:110
	201 KAR 20:225
198.010	815 KAR 7:120
	815 KAR 7:125
198B.040	601 KAR 9:015
	815 KAR 7:110
	815 KAR 7:120
	815 KAR 7:125
	815 KAR 20:100
198B.050	815 KAR 7:110
	815 KAR 7:120
	815 KAR 7:125
	815 KAR 20:100
198B.060	815 KAR 7:110
	815 KAR 7:120
	815 KAR 7:125
198B.070	815 KAR 7:110
198B.080	815 KAR 7:120
	815 KAR 7:125
198B.110	815 KAR 7:120
	815 KAR 7:125
198B.260	815 KAR 7:120
	815 KAR 7:125
198B.6673	815 KAR 8:100
198B.658	815 KAR 8:050
198B.660	815 KAR 8:050
198B.664	815 KAR 8:050
198B.666	815 KAR 8:035
198B.668	815 KAR 8:035
198B.672	815 KAR 8:050
198B.990	815 KAR 7:120
	815 KAR 7:125
200.503	908 KAR 2:230
200.505	908 KAR 2:230
200.650-200.276	902 KAR 30:110
200.660	902 KAR 30:130
200.664	815 KAR 8:035
	902 KAR 30:130
200.654	902 KAR 30:120
	907 KAR 1:014
	907 KAR 1:015
202.508	908 KAR 2:230
202.509	908 KAR 2:230
205.010	921 KAR 2:040
205.200	921 KAR 2:040
205.245	921 KAR 2:040
205.520	907 KAR 1:012
	907 KAR 3:215
205.560	907 KAR 3:215
205.637	907 KAR 1:015
205.510	907 KAR 1:019
	907 KAR 1:825
205.520	907 KAR 1:479
205.560	907 KAR 1:019
205.565	907 KAR 1:825
205.561	907 KAR 1:019
205.5605	907 KAR 3:090
205.5606	907 KAR 3:090
205.5607	907 KAR 3:090
205.5631-205.5639	907 KAR 1:019
205.564	907 KAR 1:019
205.637	907 KAR 1:825
205.638	907 KAR 1:825
205.639	907 KAR 1:825
205.640	907 KAR 1:825
205.641	907 KAR 1:825
205.6316	907 KAR 1:019
205.8451	907 KAR 1:019
	907 KAR 3:090
205.8453	907 KAR 1:019
	907 KAR 1:677
205.8477	907 KAR 3:090
209.160	103 KAR 3:050
210.005	908 KAR 2:230
210.010	908 KAR 2:230
210.040	908 KAR 2:230
210.370-485	908 KAR 2:230
210.710	908 KAR 3:050
210.720	908 KAR 3:050
210.730	908 KAR 3:050
211.090	902 KAR 2:060
211.220	902 KAR 2:060
214.032-214.036	902 KAR 2:060
214.615	201 KAR 8:560
	201 KAR 8:570
	201 KAR 22:020
	201 KAR 20:070
	201 KAR 20:110
216B.010-216B.131	902 KAR 20:410
216B.105	803 KAR 25:091
216B.990	902 KAR 20:410
216.2920-216.2929	900 KAR 7:030
216-400	201 KAR 20:411
216.380	907 KAR 1:015
	907 KAR 1:825
217.005-217.205	902 KAR 45:005
217.015	907 KAR 1:019
217.025	902 KAR 45:110
217.215	201 KAR 2:165
217.822	907 KAR 1:019
224.01-010	401 KAR 51:001
	401 KAR 52:001
224.01-310	103 KAR 3:020
	103 KAR 3:050
224.10-110	401 KAR 8:100
	401 KAR 52:001
224.20-100	401 KAR 51:001
	401 KAR 52:001

KRS INDEX

KRS SECTION	REGULATION
224.20-110	401 KAR 51:001
	401 KAR 52:001
224.20-120	401 KAR 51:001
	401 KAR 52:001
224.10	401 KAR 59:015
224.43-310	401 KAR 49:080
224.43-315	401 KAR 49:080
224.43-345	401 KAR 49:080
224.43-505	401 KAR 49:080
224.60	103 KAR 3:050
224.60-100	401 KAR 8:100
227A.100	815 KAR 35:100
227.300	815 KAR 7:120
227.550	815 KAR 7:120
	815 KAR 7:125
230	810 KAR 1:001
	811 KAR 1:005
	811 KAR 2:010
230.210-230.375	810 KAR 1:011
	810 KAR 1:120
	811 KAR 1:125
	811 KAR 1:250
	811 KAR 2:060
	811 KAR 2:160
230.215	810 KAR 1:009
	810 KAR 1:026
	810 KAR 1:110
	810 KAR 1:130
	810 KAR 1:220
	811 KAR 1:240
	811 KAR 1:260
	811 KAR 2:150
	811 KAR 2:170
230.225	810 KAR 1:026
230.230	810 KAR 1:110
	811 KAR 1:240
	811 KAR 2:150
230.240	810 KAR 1:110
	810 KAR 1:130
	811 KAR 1:240
	811 KAR 2:150
	811 KAR 1:260
	811 KAR 2:170
230.260	810 KAR 1:026
	810 KAR 1:110
	810 KAR 1:130
	811 KAR 1:220
	811 KAR 1:260
	811 KAR 2:020
	811 KAR 2:140
	811 KAR 2:150
	811 KAR 2:170
	811 KAR 2:260
230.265	810 KAR 1:130
	811 KAR 1:260
	811 KAR 2:170
230.280	811 KAR 1:220
	811 KAR 2:140
230.290	810 KAR 1:110
	810 KAR 1:130
	811 KAR 1:220
	811 KAR 1:240
	811 KAR 1:260
	811 KAR 2:020
	811 KAR 2:140
	811 KAR 2:150
	811 KAR 2:170
230.300	810 KAR 1:110
	811 KAR 1:220
	811 KAR 1:240
	811 KAR 2:140
230.310	810 KAR 1:110
	811 KAR 1:220
	811 KAR 1:240
230.320	810 KAR 1:110
	810 KAR 1:130
	811 KAR 1:240
	811 KAR 1:260
	811 KAR 2:020
	811 KAR 2:140
	811 KAR 2:150
	811 KAR 2:170
230.370	810 KAR 1:110
	810 KAR 1:240
	811 KAR 2:150
230.398	811 KAR 1:220
230.990	810 KAR 1:011
	810 KAR 1:120
	811 KAR 1:120
	811 KAR 1:250
	811 KAR 2:060
	811 KAR 2:160
234.321	103 KAR 3:050
234.370	103 KAR 3:050
243.710-243.884	103 KAR 3:050
246.295	302 KAR 20:066
247.920	103 KAR 3:020
248.756	103 KAR 3:050
251.451	302 KAR 34:020
251.720	302 KAR 34:020
256.295	302 KAR 20:020
257.020	302 KAR 21:005
257.030	302 KAR 20:020
	302 KAR 20:050
	302 KAR 20:115
	302 KAR 21:005
257.080	302 KAR 21:005
257.160	302 KAR 20:050
257.230	302 KAR 20:115
257.550	302 KAR 20:066
281.752	601 KAR 1:018
286.8-010	808 KAR 12:002
	808 KAR 12:021
286.8-020	808 KAR 12:066
286.8-030	808 KAR 12:021
286.8-032	808 KAR 12:021
	808 KAR 12:024
	808 KAR 12:076
286.8-034	808 KAR 12:021
286.8-036	808 KAR 12:024
286.8-060	808 KAR 12:021
	808 KAR 12:024
286.8-075	808 KAR 12:024
286.8-080	808 KAR 12:021
286.8-090	808 KAR 12:086
286.8-100	808 KAR 12:021
286.8-125	808 KAR 12:002
286.8-140	808 KAR 12:021
286.8-150	808 KAR 12:026
286.8-160	808 KAR 12:023
286.8-170	808 KAR 12:002
	808 KAR 12:022
	808 KAR 12:023
286.8-180	808 KAR 12:022
286.8-225	808 KAR 12:026
286.8-227	808 KAR 12:026
286.8-255	808 KAR 12:021
	808 KAR 12:086
286.8-260	808 KAR 12:021
286.8-265	808 KAR 12:086
	808 KAR 12:096
286.8-285	808 KAR 12:021
286.295	808 KAR 12:021
299.530	103 KAR 3:050

KRS INDEX

KRS SECTION	REGULATION
304.1050	806 KAR 17:545
	806 KAR 17:555
304.1-050	806 KAR 9:070
	806 KAR 46:040
	806 KAR 46:050
304.1-110	806 KAR 9:070
304.2-310	806 KAR 17:320
304.3-270	103 KAR 15:180
304.4-010	806 KAR 9:001
	806 KAR 9:070
304.4-030	103 KAR 3:050
304.4-105	806 KAR 9:001
304.9-020	806 KAR 9:060
	806 KAR 17:545
	806 KAR 17:320
304.9-030	806 KAR 9:070
	806 KAR 9:121
304.9-105	806 KAR 9:070
304.9-130	806 KAR 9:121
304.9-190	806 KAR 9:070
304.9-210	806 KAR 9:121
304.9-230	806 KAR 9:001
	806 KAR 9:070
304.9-320	806 KAR 9:070
304.9-330	806 KAR 9:070
304.9-390	806 KAR 9:060
304.9-430	806 KAR 9:030
	806 KAR 9:060
	806 KAR 9:121
304.9-432	806 KAR 9:030
	806 KAR 9:060
304.9-485	806 KAR 9:121
304.9-505	806 KAR 9:070
304.11-050	103 KAR 3:050
304.12-010	806 KAR 12:150
	806 KAR 12:170
304.12-020	806 KAR 12:150
	806 KAR 12:170
304.12-230	806 KAR 12:150
	806 KAR 12:170
304.13-011	806 KAR 46:050
304.13-051	806 KAR 46:050
304.14-120	806 KAR 15:090
	806 KAR 17:555
	806 KAR 46:050
304.14-430-304.14-450	806 KAR 17:555
304.15-075	806 KAR 15:090
304.15-700	806 KAR 9:070
304.17-042	806 KAR 17:320
304.17A-005	806 KAR 17:545
304.17-070	806 KAR 17:320
304.17A-080	806 KAR 17:180
304.17A-140	806 KAR 17:320
304.17A-200	806 KAR 17:320
304.17A-230	806 KAR 17:320
304.17A-250	806 KAR 9:121
304.17A-095-304.17A-0954	806 KAR 17:555
304.17A-243	806 KAR 17:320
304.17A-245	806 KAR 17:320
304.17B-001-304.17B-022	806 KAR 17:320
304.18-110	806 KAR 17:320
304.48-020	806 KAR 46:040
	806 KAR 46:050
304.48-050	806 KAR 46:040
304.48-070	806 KAR 46:040
304.48-170	806 KAR 46:040
	806 KAR 12:170
304.48-180	806 KAR 46:050
304.49-220	103 KAR 3:050
304.48-230	806 KAR 46:040
	806 KAR 12:170
309.133	201 KAR 34:020
309.1335	201 KAR 34:020
309.138	201 KAR 34:020
309.304	201 KAR 39:050
309.312	201 KAR 39:050
309.314	201 KAR 39:050
309.350	201 KAR 42:010
	201 KAR 42:020
309.352	201 KAR 42:080
309.355	201 KAR 42:010
	201 KAR 42:030
	201 KAR 42:050
	201 KAR 42:060
	201 KAR 42:080
	201 KAR 42:100
309.357	201 KAR 42:040
309.358	201 KAR 42:035
	201 KAR 42:070
	201 KAR 42:080
309.359	201 KAR 42:035
	201 KAR 42:070
309.361	201 KAR 42:040
	201 KAR 42:110
309.362	201 KAR 42:020
	201 KAR 42:050
	201 KAR 42:060
309.363	201 KAR 42:080
311A.170	201 KAR 20:400
311.597	201 KAR 9:006
314.011	201 KAR 20:056
	201 KAR 20:057
	201 KAR 20:059
	201 KAR 20:061
	201 KAR 20:062
	201 KAR 20:161
	201 KAR 20:162
	201 KAR 20:215
	201 KAR 20:220
	201 KAR 20:400
	201 KAR 20:490
314.021	201 KAR 20:400
314.031	201 KAR 20:110
	201 KAR 20:161
	201 KAR 20:162
	201 KAR 20:410
314.035	201 KAR 20:470
314.041	201 KAR 20:070
	201 KAR 20:110
	201 KAR 20:225
	201 KAR 20:230
	201 KAR 20:240
	201 KAR 20:370
314.042	201 KAR 20:056
	201 KAR 20:110
	201 KAR 20:057
	201 KAR 20:225
	201 KAR 20:240
	201 KAR 20:370
314.051	201 KAR 20:070
	201 KAR 20:110
	201 KAR 20:225
	201 KAR 20:230
	201 KAR 20:240
	201 KAR 20:370
314.071	201 KAR 20:161
	201 KAR 20:162
	201 KAR 20:225
	201 KAR 20:230
	201 KAR 20:240
	201 KAR 20:370
314.073	201 KAR 20:215
	201 KAR 20:220
	201 KAR 20:225
	201 KAR 20:230
	201 KAR 20:240

KRS INDEX

KRS SECTION	REGULATION
314.075	201 KAR 20:225
314.085	201 KAR 20:163
	201 KAR 20:225
	201 KAR 20:450
314.091	201 KAR 20:056
	201 KAR 20:110
	201 KAR 20:161
	201 KAR 20:162
	201 KAR 20:225
	201 KAR 20:370
	201 KAR 20:400
	201 KAR 20:450
314.103	201 KAR 20:110
314.107	201 KAR 20:161
314.131	201 KAR 20:220
314.137	201 KAR 20:470
314.142	201 KAR 20:240
	201 KAR 20:411
314.161	201 KAR 20:056
	201 KAR 20:162
	201 KAR 20:240
314.171	201 KAR 20:450
314.193	201 KAR 20:056
314.470	201 KAR 20:056
	201 KAR 20:070
	201 KAR 20:110
	201 KAR 20:161
	201 KAR 20:411
	201 KAR 20:450
314.991	201 KAR 20:110
	201 KAR 20:161
	201 KAR 20:162
	201 KAR 20:215
315.191	201 KAR 2:165
315.500	201 KAR 2:330
315.505	201 KAR 2:330
318.010	815 KAR 2:020
318.015	815 KAR 2:020
318.054	815 KAR 20:032
318.130	815 KAR 2:020
	815 KAR 20:032
	815 KAR 20:100
318.150	815 KAR 2:020
	815 KAR 20:100
318.200	815 KAR 2:020
319A.010	201 KAR 28:130
319A.100	201 KAR 28:130
319A.010-319A.210	201 KAR 28:010
322.290	201 KAR 18:150
324A.035	40 KAR 2:350
324A.050	40 KAR 2:350
327.040	201 KAR 22:053
327.050	201 KAR 22:020
	201 KAR 22:070
327.060	201 KAR 22:020
	201 KAR 22:070
327.070	201 KAR 22:020
	201 KAR 22:053
327.080	201 KAR 22:020
329A.070	201 KAR 41:100
335B.010	105 KAR 1:370
335B.020	105 KAR 1:370
334A.160	201 KAR 17:030
334A.170	201 KAR 17:030
334.150	201 KAR 7:075
335.010-335.160	201 KAR 23:050
335.080	201 KAR 23:020
	201 KAR 23:070
335.090	201 KAR 23:020
335.100	201 KAR 23:020
	201 KAR 23:070
335.130	201 KAR 23:020
	201 KAR 23:075
335.500	201 KAR 36.060
335.505	201 KAR 36.060
335.525	201 KAR 36.060
	201 KAR 36.070
335.527	201 KAR 36.070
335.990	201 KAR 23:050
338	803 KAR 2:306
	803 KAR 2:318
	803 KAR 2:413
	803 KAR 2:419
	803 KAR 2:423
338.015	803 KAR 2:320
	803 KAR 2:412
	803 KAR 2:500
338.031	803 KAR 2:320
	803 KAR 2:412
338.051	803 KAR 2:316
	803 KAR 2:318
	803 KAR 2:411
	803 KAR 2:412
	803 KAR 2:414
	803 KAR 2:418
	803 KAR 2:423
	803 KAR 2:430
	803 KAR 2:419
338.061	803 KAR 2:316
	803 KAR 2:318
	803 KAR 2:411
	803 KAR 2:414
	803 KAR 2:418
	803 KAR 2:421
	803 KAR 2:430
339.015	803 KAR 2:300
	803 KAR 2:316
341.020	103 KAR 18:070
341.090	103 KAR 18:070
341.095	103 KAR 18:070
341.190	787 KAR 2:020
341.350	787 KAR 1:090
341.360	787 KAR 1:090
341.370	787 KAR 1:090
341.380	787 KAR 1:090
341.395	787 KAR 1:320
342	105 KAR 1:370
342.0011	803 KAR 25:089
342.019	803 KAR 25:089
342.020	803 KAR 25:089
	803 KAR 25:091
342.035	803 KAR 25:089
	803 KAR 25:091
342.315	803 KAR 25:091
344.030	105 KAR 1:370
344.040	105 KAR 1:370
351.010	805 KAR 8:060
351.025	805 KAR 8:060
351.070	803 KAR 3:100
351.1041	805 KAR 8:060
351.102	805 KAR 7:020
351.105	805 KAR 7:020
351.175	103 KAR 3:050
	805 KAR 8:060
351.194	805 KAR 8:060
351.010-352.550	805 KAR 8:060
365.015	806 KAR 9:121
369.107	31 KAR 4:140
380.010	40 KAR 2:350
380.030	40 KAR 2:350
380.040	40 KAR 2:350
380.050	40 KAR 2:350
380.060	40 KAR 2:350
380.070	40 KAR 2:350
380.080	40 KAR 2:350
380.100	40 KAR 2:350

KRS INDEX

KRS SECTION	REGULATION
380.110	40 KAR 2:350
380.120	40 KAR 2:350
380.130	40 KAR 2:350
380.990	40 KAR 2:350
395.470	103 KAR 3:050
413.120	103 KAR 3:050
421.500-421.550	201 KAR 20:411
424.220	109 KAR 15:020
424.230	109 KAR 15:020
424.260	109 KAR 15:020
441.135	109 KAR 15:020
441.215	109 KAR 15:020
441.235	109 KAR 15:020
686.350	109 KAR 15:020
686.360	109 KAR 15:020
91A.040	109 KAR 15:020
7 C.F.R.	921 KAR 3:030
9 C.F.R.	302 KAR 20:065
12 C.F.R.	40 KAR 2:350
21 C.F.R.	907 KAR 1:677
23 C.F.R	601 KAR 1:018
26 C.F.R.	102 KAR 1:225
	102 KAR 1:230
29 C.F.R.	105 KAR 1:370
	803 KAR 2:300
	803 KAR 2:306
	803 KAR 2:308
	803 KAR 2:316
	803 KAR 2:318
	803 KAR 2:320
	803 KAR 2:412
	803 KAR 2:413
	803 KAR 2:414
	803 KAR 2:415
	803 KAR 2:418
	803 KAR 2:425
	803 KAR 2:500
	803 KAR 5:505
	803 KAR 2:550
34 C.F.R.	11 KAR 3:100
	781 KAR 1:040
	902 KAR 30:110
	902 KAR 30:120
	902 KAR 30:130
	902 KAR 30:200
40 C.F.R.	401 KAR 8:100
	401 KAR 51:001
	401 KAR 52:001
42 C.F.R.	907 KAR 1:014
	907 KAR 1:015
	907 KAR 1:019
	907 KAR 1:479
	907 KAR 1:677
	907 KAR 1:825
	907 KAR 3:090
	907 KAR 3:100
45 C.F.R.	907 KAR 1:479
49 C.F.R.	201 KAR 40:040
	201 KAR 40:060
	601 KAR 1:018
	601 KAR 1:201
10 U.S.C.	502 KAR 32:010
12 U.S.C.	40 KAR 2:350
20 U.S.C.	11 KAR 3:100
	105 KAR 1:370
	902 KAR 30:001
	902 KAR 30:110
	902 KAR 30:120
	902 KAR 30:130
	902 KAR 30:141
	902 KAR 30:150
	902 KAR 30:160
	902 KAR 30:180
	902 KAR 30:200
21 U.S.C.	105 KAR 1:370
26 U.S.C.	4 KAR 1:010
	4 KAR 1:020
	4 KAR 1:030
	4 KAR 1:040
	102 KAR 1:225
	102 KAR 1:230
	102 KAR 1:245
	102 KAR 1:320
	103 KAR 18:070
	105 KAR 1:190
	105 KAR 1:320
	787 KAR 1:320
	806 KAR 12:150
29 U.S.C.	781 KAR 1:040
	803 KAR 2:402
	803 KAR 2:411
	806 KAR 12:150
38 U.S.C.	4 KAR 1:010
	102 KAR 1:225
42 U.S.C.	11 KAR 3:100
	31 KAR 4:140
	201 KAR 8:540
	201 KAR 20:235
	401 KAR 51:001
	401 KAR 52:001
	502 KAR 31:020
	502 KAR 32:010
	907 KAR 1:012
	907 KAR 1:019
	907 KAR 1:479
	907 KAR 1:677
	907 KAR 1:825
	907 KAR 3:090
	907 KAR 3:215
	907 KAR 5:005
	921 KAR 2:040
	921 KAR 3:030
49 U.S.C.	601 KAR 1:201
2010 Ky Acts Ch 1	101 KAR 5:015
2010 Ky. Acts Ch. 85	201 KAR 8:007
	201 KAR 8:390
	201 KAR 8:500
	201 KAR 8:510
	201 KAR 8:520
	201 KAR 8:530
	201 KAR 8:540
	201 KAR 8:560
	201 KAR 8:570
	201 KAR 8:580
2010 ES Ky. Acts Ch.1,	806 KAR 17:540
	806 KAR 17:545
	806 KAR 17:555
2010 HB 1, 2010	702 KAR 7:130
EO 2009-535	810 KAR 1:009
	810 KAR 1:026
	811 KAR 2:140

TECHNICAL AMENDMENT INDEX

Regulation Number	Effective Date	Regulation Number	Effective Date

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2010 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: Finalized 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.

The Board of Nursing has requested that technical amendments be made to reflect the statutory change of the term "Advance Registered Nurse Practitioner" or "ARNP" to "Advance Practice Registered Nurse" or "APRN". This change was applied to 201 KAR 20:059, 201 KAR 20:161, 201 KAR 20:163, 201 KAR 20:215, 201 KAR 20:220, 201 KAR 20:235, 201 KAR 20:400, 201 KAR 20:410, 201 KAR 20:450, and 201 KAR 20:490, as of July 15, 2010.

AGRICULTURE, DEPARTMENT OF
Office of Consumer and Environmental Protection
Certification; 302 KAR 29:060
Commercial structural pest control and fumigation; 302 KAR 29:050
Definitions for 302 KAR Chapter 29; 302 KAR 29:010
Kentucky Grain Insurance and Grain Dealers
Bonding requirements; 302 KAR 34:020
Livestock
Animal diseases to be reported; 302 KAR 21:005
Livestock Sanitation
Carcasses; 302 KAR 20:050
Chronic wasting disease surveillance in farmed cervids; 302 KAR 20:066
General requirements for interstate and intrastate movements of animals; 302 KAR 20:020
Sale and exhibition of Kentucky origin animals in Kentucky; 302 KAR 20:065
Vesicular stomatitis; 302 KAR 20:115

AIR QUALITY, DIVISION OF
Attainment and Maintenance of the National Ambient Air Quality Standards
Definitions for 401 KAR Chapter 51; 401 KAR 51:001
Permits, Registrations, and Prohibitory Rules
Definitions for 401 KAR 52:001; 401 KAR 52:001

ATTORNEY GENERAL, OFFICE OF
Consumer Protection Division
Debt adjusters; 40 KAR 2:350

BEHAVORIAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABLILITES, DEPARTMENT FOR
Administration and Financial Management, Division of
Per diem rates; 908 KAR 3:050
Behavioral Health, Division of
Kentucky family peer support specialist; 908 KAR 2:230

COMMUNITY BASED SERVICES; DEPARTMENT FOR
Family Support, Division of
Procedures for determining initial and continuing eligibility; 921 KAR 2:040
Food Stamp Program
Application process; 921 KAR 3:030

DENISTRY, BOARD OF
Board
Advisory opinions; 201 KAR 8:510
Board organization; 201 KAR 8:500
Dental practices; 201 KAR 8:540
Fees and fines; 201 KAR 8:520
General anesthesia; 201 KAR 8:390E
Licensure of dentists; 201 KAR 8:530
Licensure of dental hygienists; 201 KAR 8:560
Registration of dental assistants; 201 KAR 8:570
Repeal of 201 KAR 8:006, 8:015, 8:070, 8:130, 8:135, 8:140, 8:150, 8:160, 8:170, 8:180, 8:185, 8:190, 8:220, 8:225, 8:230, 8:240, 8:250, 8:260, 8:265, 8:270, 8:277, 8:280, 8:290, 8:310, 8:320, 8:330, 8:340, 8:345, 8:350, 8:355, 8:400, 8:420, 8:430, 8:440, 8:450, 8:460, 8:70, and 8:490; 201 KAR 8:007E

ECONOMIC DEVELOPMENT; CABINET FOR
Kentucky Economic Development Finance Authority
Kentucky small business investment credit program; 307 KAR 1:060

EDUCATION, BOARD OF
Assessment and Accountability
Assistance to low-achieving school; 703 KAR 5:190
Repeal of 703 KAR 5:170; 703 KAR 5:171
Education, Department of
Pupil Transportation
Vocational pupils, reimbursement for; 702 KAR 5:110
Office of Instruction
Required core academic standards; 704 KAR 3:303
Minimum requirements for high school graduation; 704 KAR 3:305
School Terms, Attendance and Operation
Approval of innovative alternative school calendars; 702 KAR 7:130

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education, Board of *(See Education, Board of)*
Libraries and Archives; Department for
Archives
Records retention schedules; authorized schedules; 725 KAR 1:061
Workforce Investment; Department of *(See Workforce Investment; Department of)*

EDUCATION PROFESSIONAL STANDARDS BOARD
Assessment
Examination prerequisites for principal certification; 16 KAR 6:030
Written examination prerequisites for teacher certification; 16 KAR 6:010
Written examination prerequisites for occupation-based career and technical education teachers; 16 KAR 6:020
Teaching Certificates
Probationary certificate for teachers of engineering and technology; 16 KAR 2:150

ENVIRONMENTAL PROTECTION, DEPARTMENT FOR
Waste Management, Division of *(See Waste Management; Division of)*

ENERGY AND ENVIRONMENT CABINET
Air Quality, Division *(Air Quality, Division of)*
Environmental Protection; Department for *(See Environmental Protection; Department for; 401 KAR Chapter 49)*
Mine Safety and Licensing, Office of *(Mine Safety and Licensing; Office of)*
Natural Resources, Department for *(Natural Resources, Department for)*
Nature Preserves Commission
Management, use, and protection of nature preserves; 400 KAR 2:090

FINANCE AND ADMINSITRATION CABINET
Kentucky Judicial Form Retirement System
Judicial Branch
General Compliance with federal tax laws; 4 KAR 1:010
Limitation on benefits; 4 KAR 1:040
Minimum distribution; 4 KAR 1:020
Rollovers and transfers to other plans; 4 KAR 1:030
Kentucky Retirement Systems
General compliance with federal tax laws; 102 KAR 1:225
Kentucky retirement systems and personnel; 105 KAR 1:370
Limitations on benefits; 102 KAR 1:230
Qualified domestic relations orders; 105 KAR 1:190
Rollovers and transfers of contributions to other plans; 102 KAR 1:245
Kentucky Teachers' Retirement System
Qualified domestic relations orders; 102 KAR 1:320
Travel and administrative expenses; 102 KAR 1:330
Pharmacy, Board of *(See Pharmacy, Board of)*
Revenue, Department of *(See Revenue, Department of)*
Secretary, Office of
Kentucky resident bidder reciprocal preference; 200 KAR 5:400
Preference for purchases of commodities or services; 200 KAR 5:410

FISH AND WILDLIFE RESOURCES, DEPARTMENT OF
Fish
Commercial boat docks, concession stands, and boat rental

facilities; 301 KAR 1:010
Recreational fishing limits; 301 KAR 1:201
Taking of fish by nontradional fishing methods; 301 KAR 1:410
Game
Dove, wood duck, teal, and other migratory game bird hunting; 301 KAR 2:225
Hunting and trapping seasons and limits for furbearers; 301 KAR 2:251
Transportation and holding of live exotic wildlife; 301 KAR 2:082
Waterfowl hunting requirements on public lands; 301 KAR 2:222
Waterfowl seasons and limits; 301 KAR 2:221
Wildlife
Swan Lake Unit of Boatwright Wildlife Management Area; 301 KAR 4:050

GENERAL GOVERNMENT CABINET
Agriculture, Department of *(See Agriculture, Department of)*
Dentistry, Board of *(See Dentistry, Board of)*
Interpreters for the Deaf and Hard of Hearing, Board of
Renewal of licenses and extension of temporary licenses; 201 KAR 39:050
Kentucky Veterans' Program Trust Fund
Military family assistance trust fund; 106 KAR 2:020
Licensed Professional Counselors; Board of
Education requirements; 201 KAR 36:070
Qualifying experience under supervision; 201 KAR 36:060
Licensure for Professional Art Therapists; Board of
Fees; 201 KAR 34:020
Licensure for Professional Engineers and Land Surveyors, Board of
Standards of practice; 201 KAR 18:150
Local Government; Depart for
County Budget Preparation and State Local Finance Officer Policy Manual; 109 KAR 15:020
Massage Therapy
Renewal and reinstatement procedures; 201 KAR 42:040
Military Affairs, Department of
Medical Licensure; Board of *(Medical Licensure; Board of)*
Repeal of 201 KAR 9:005; 201 KAR 9:006
Nursing, Board of *(See Nursing, Board of)*
Physical Therapy, Board of *(See Physical Therapy, Board of)*
Real Estate Appraisers Board
Standards of practice; 201 KAR 30:040
Social Work; Board of *(See Social Work; Board of)*
Specialists in hearing instruments, Board of
Continuing education requirements;201 KAR 7:075
Speech-language Pathology and Audiology; 201 KAR 17:030

HEALTH AND FAMILY SERVICES, CABINET FOR
Behavioral Health, Developmental and Intellectual Disabilities, Department for *(Behavioral Health, Developmental and Intellectual Disabilities, Department for)*
Community Alternatives, Department for *(See Medicaid, Department for)*
Community Based Services, Department for *(See Community Based Services, Department for)*
Health care, Division of *(See Health Care, Division of)*
Medicaid Services, Department for *(See Medicaid, Department for)*
Office of Health Policy
Data reporting by health care providers; 900 KAR 7:030
Program Integrity, Division of *(See Medicaid, Department for)*
Public Health, Department for *(See Public Health, Department for)*

HEATING, VENTILATION AND AIR CONDITIONING, DIVISION OF *(See Housing, Buildings and Construction, Department of)*

HOUSING, BUILDINGS AND CONSTRUCTION
Electrical continuing education procedure; 815 KAR 35:100
Heating, Ventilation and air conditioning, Division of
Heating, Ventilation, and Air Conditioning Licensing Requirements
Continuing education requirements for heating, ventilation, and air conditioning (HVAC) license holders; 815 KAR 8:050
Criteria for local jurisdiction HVAC programs; 815 KAR 8:100
Reciprocal licensing requirements; 815 KAR 8:035
Kentucky Building Code
Criteria for expanded local jurisdiction; 815 KAR 7:110
Kentucky building code; 815 KAR 7:120
Kentucky residential code; 815 KAR 7:125
Plumbing, Division of *(See Plumbing, Division of)*

INSURANCE, DEPARTMENT OF
Agent, Consultants, Solicitors and Adjusters
Adjusters, apprentice adjusters; licenses, restrictions; 806 KAR 9:030
Examinations, 806 KAR 9:070
Identification cards, 806 KAR 9:060
Prelicensing courses of study; instructors; 806 KAR 9:001
Repeal of 806 KAR 9:120, 806 KAR 9:130, 806 KAR 9:250 and 806 KAR 9:280; 806 KAR 9:121
Health and Life Division
Annuity disclosures; 806 KAR 12:150
Life insurance disclosures; 806 KAR 12:170
Repeal of 806 KAR 46:010; 806 KAR 46:011
Health Insurance Contracts
ICARE Program employer eligibility, application process, and requirements; 806 KAR 17:545
ICARE Program high-cost conditions; 806 KAR 17:540
ICARE Program requirements; 806 KAR 17:555
Kentucky access requirements; 806 KAR 17:320
Standard health benefit plan; 806 KAR 17:180
Life insurance and annuity contracts
Notice of rights as an owner of a life insurance policy; 806 KAR 15:090
Property and Casualty, Division of
Forms for application and financial statements; 806 KAR 46:040
Liability self-insurance group rate, underwriting and evidence of coverage filings; 806 KAR 46:050

JUSTICE AND PUBLIC SAFETY CABINET
Correction, Department of
Corrections policies and procedures; 501 KAR 6:020
Frankfort Career Development Center; 501 KAR 6:090
Kentucky Law Enforcement Council
Career Development Program; 503 KAR 1:170
Department of Criminal Justice Training basic training: graduation requirements; records; 503 KAR 1:110
Kentucky State Police, Department of
Forensic Laboratory
Centralized database for DNA identification records; 502 KAR 32:010
Sex offender registration system; 502 KAR 31:020
Office of the Secretary
Filing and processing SLEO commissions; 500 KAR 2:020
Special Local Peace Officers
Filing and processing SLPO commissions; 500 KAR 3:020

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Student and Administrative Services; Division of
KHEAA Grant Programs
CAP grant award determination procedure; 11 KAR 5:145
Kentucky Loan Program
Administrative wage garnishment; 11 KAR 3:100

KENTUCKY HORSE RACING COMMISSION
Harness
Definitions; 811 KAR 1:005
Harness racing at county fairs; 811 KAR 1:220
Exotic wagering; 811 KAR 1:250
Out-of-competition testing; 811 KAR 1:240
Pari-mutuel rules; 811 KAR 1:125
Postrace sampling and testing procedures; 811 KAR 1:260
Quarter Horse, Appaloosa and Arabian Racing
Definitions; 811 KAR 2:020
Exotic wagering; 811 KAR 2:160
Licensing of racing associations; 811 KAR 2:140
Licensing quarter horse, appaloosa or Arabian racing; 811 KAR 2:020
Out-of-competition testing; 811 KAR 2:150
Pari-mutuel wagering; 811 KAR 2:060

Postrace sampling and testing procedures; 811 KAR 2:170
Thoroughbred Racing
Definition; 810 KAR 1:001
Exotic wagering; 810 KAR 1:120
Jockeys and apprentices; 810 KAR 1:009
Out-of-completion testing; 810 KAR 1:110
Pari-mutuel wagering; 810 KAR 1:011
Postrace sampling and testing procedures; 810 KAR 1:130
Racing associations; 810 KAR 1:026

KENTUCKY STATE BOARD OF ELECTIONS
Forms and Procedures
Electronic submission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens; 31 KAR 4:140
Facsimile transmission of the Federal Post Card Application and delivery of the absentee ballot for military, their dependents, and overseas citizens; 31 KAR 4:130

LABOR CABINET
Workplace standards; Department of *(See Workplace standards; Department)*

MASSAGE THERAPY, BOARD OF LICENSURE FOR
Board
Application process, exam, and curriculum requirements; 201 KAR 42:035
Code of ethics, and standards of practice for massage therapists; 201 KAR 42:060
Complaints procedure and disciplinary therapy; 201 KAR 42:050
Continuing education requirements; 201 KAR 42:110
Endorsement; 201 KAR 42:070
Fees; 201 KAR 42:020
Goals for massage therapy sessions; 201 KAR 42:010
Licensee's change of name, home address, or place of business; 201 KAR 42:030
Programs of massage therapy instruction; 201 KAR 42:080
Renewal; 201 KAR 42:040

MEDICAID SERVICES, DEPARTMENT FOR
Medicaid Services, Department for
Healthcare Facilities Management, Division of
Diagnosis-related group (DRG) inpatient hospital reimbursement; 907 KAR 1:825
Durable medical equipment covered benefits and reimbursement; 907 KAR 1:479
Inpatient hospital service coverage; 907 KAR 1:012
Medicaid recipient lock-in program; 907 KAR 1:677
Outpatient hospital services; 907 KAR 1:014
Outpatient pharmacy program; 907 KAR 1:019
Payments for outpatient hospital services; 907 KAR 1:015
Community Alternatives, Division of
Payments and Services
Acquired brain injury waiver services; 907 KAR 3:090
Reimbursement for acquired brain injury waiver services; 907 KAR 3:100
Tobacco cessation coverage and reimbursement; 907 KAR 3:215
Program Integrity, Division of
Health insurance premium payment (HIPP) program; 907 KAR 5:005

MEDICAL LICENSURE, BOARD OF
Repeal of 201 KAR 9:005; 201 KAR 9:006

MINE SAFETY AND LICENSING, OFFICE OF
Mining safety standards
Equipment use and operation; 805 KAR 3:100
Miner Training, Education and Certification
Training and certification of inexperienced miners; 805 KAR 7:020
Sanctions and Penalties
Criteria for the imposition and enforcement of sanctions against licensed premises; 805 KAR 8:060

NATURAL RESOURCES, DEPARTMENT FOR
Mine Safety and Licensing, Office of *(Mine Safety and Licensing; Office of)*

NURING, BOARD OF
Advanced practice registered nurse controlled substances prescriptions; 201 KAR 20:057
Advanced practice registered nurse licensure, program requirements, recognition of a national certifying organization; 201 KAR 20:056
Alternative program; 201 KAR 20:450
Applications for licensure; 201 KAR 20:370
Continuing competency requirements; 201 KAR 20:215
Delegation of nursing tasks; 201 KAR 20:400
Dialysis technician credentialing requirements and training program standards; 201 KAR 20:470
Expungement of records, 201 KAR 20:410
Doctor of Nursing Practice (DNP) degree; 201 KAR 20:061
Fees for applications and for services; 201 KAR 20:240
Investigation and disposition of complaints; 201 KAR 20:161
Licensure by endorsement, 201 KAR 20:110
Licensure by examination, 201 KAR 20:070
Licensed practical nurse intravenous therapy scope of practice; 201 KAR 20:490
Nursing continuing education provider approval; 201 KAR 20:220
Procedures for disciplinary hearings pursuant to KRS 314.091; 201 KAR 20:162
Reinstatement of licensure; 201 KAR 20:225
Renewal of licenses; 201 KAR 20:230
Scope and standards of practice of advanced practice registered nurses; 201 KAR 20:057
Sexual assault nurse examiner program standards and credential requirements, 201 KAR 20:411
Standards for approved evaluators; 201 KAR 20:163
Standards for advanced practice registered nurse (ARPN) programs of nursing; 201 KAR 20:062
The prevention of transmission of HIV and HBV by nurses; 201 KAR 20:235

OCCUPATIONAL THERAPY; BOARD OF
Board
Definitions and abbreviations; 201 KAR 28:010
Supervision of occupational therapy assistants, occupational therapy aides, occupational therapy students, and temporary permit holders; 201 KAR 28:130

PERSONNEL CABINET
Personnel Cabinet, General
Furloughs; 101 KAR 5:015
Secretary, Office of
2010 Plan Year Handbook for the Public Employee Health Insurance Program; 101 KAR 2:210

PHARMACY, BOARD OF
Board
Emergency pharmacy powers; 201 KAR 2:330
Transfer of prescription information; 201 KAR 2:165

PHYSICAL THERAPY, BOARD OF
Code of ethical standards and standards of practice for physical therapists and physical therapist assistants; 201 KAR 22:053
Eligibility and credentialing procedure; 201 KAR 22:020
Requirements for foreign-educated physical therapists; 201 KAR 22:070

PLUMBING, DIVISION OF
Plumbing
Continuing education requirements for plumbers; 815 KAR 20:032
Joint and connections; 815 KAR 20:100
Parts or materials list; 815 KAR 20:020

PRIVATE INVESTIGATORS, BOARD FOR
Board
Verification of 240 hour employees; 201 KAR 41:100

PROPRIETARY EDUCATION, BOARD OF
Application for license for commercial driver license training school; 201 KAR 40:050
Application for renewal of license for commercial driver license training school; 201 KAR 40:060
Commercial driver license training school curriculum and refresher course; 201 KAR 40:040
Commercial driver license training school instructor and agent application and renewal procedures; 201 KAR 40:070
Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, and advertising and solicitation of students by commercial driver license training schools; 201 KAR 40:080
Standards for Kentucky resident commercial driver training school facilities; 201 KAR 40:100

PUBLIC HEALTH, DEPARTMENT FOR
Adult and Child Health Improvement; Division of
First Steps
Assessment, service planning, and assistive technology; 902 KAR 30:130
Covered services; 902 KAR 30:160
Coverage and payment for services; 902 KAR 30:200
Definitions; 902 KAR 30:001
Evaluation and eligibility; 902 KAR 30:120
Personnel qualifications; 902 KAR 30:150
Point of entry and service coordination; 902 KAR 30:110
Procedural safeguards; 902 KAR 30:180
Repeal of 902 KAR 30:140 and 902 KAR 30:170; 902 KAR 30:141
Epidemiology and Health Planning
Immunization schedules for attending day care centers, certified family child care homes, other licensed facilities which care for children, preschool programs, and public and private and secondary school; 902 KAR 2:060
Non-Depository Division of Financial Institutions
Change of address, name, control, or agent for service of process; 808 KAR 12:024
Claims of exemption; 808 KAR 12:020
Examination and investigation fees; 808 KAR 12:022
Definitions for 808 KAR Chapter 12; 808 KAR 12:002
Licensing and registration; 808 KAR 12:021
Procedures for distributing and using funds from the mortgage fraud prosecution fund; 808 KAR 12:026
Recordkeeping; 808 KAR 12:023
Repeal of 808 KAR 12:065; 808 KAR 12:066
Repeal of 808 KAR 12:075; 808 KAR 12:075
Repeal of 808 KAR 12:086; 808 KAR 12:085
Repeal of 808 KAR 12:095; 808 KAR 12:096
Public health and safety

PUBLIC PROTECTION CABINET
Housing, Buildings and Construction, Department *(See Housing, Buildings and Construction)*
Insurance, Department of *(See Insurance, Department of)*
Kentucky Horse Racing Commission *(See Kentucky Horse Racing Commission)*
Massage Therapy, Board of Licensure for *(See Massage Therapy, Board of Licensure for)*
Occupational Therapy; Board of *(See Occupational Therapy, Board of)*
Occupations and Professions, Office of
Private Investigators, Board for *(See Private Investigators, Board for)*
Proprietary Education, Board of *(See Proprietary Education, Board of)*

REVENUE, DEPARTMENT OF
Forms
Miscellaneous taxes forms manual; 103 KAR 3:050
Sales and telecommunications forms manual; 103 KAR 3:020
Income Tax; General Administration
Kentucky new markets development program tax credit; 103 KAR 15:180
Income Tax; Withholding
Supplemental wages and other payments subject to withholding; 103 KAR 18:070
Sales and Excise Taxes, Office of
Rebate for a governmental public facility; 103 KAR 31:102

SOCIAL WORK, BOARD OF
Continuing education; 201 KAR 23:075
Fees; 201 KAR 23:020
Renewal ,Termination, reinstatement of license; 201 KAR 23:050
Qualifying education and qualifying experience under supervision; 201 KAR 23:070

TOURISM, ARTS AND HERITAGE CABINET
Office of the Secretary
Kentucky Film Industry Incentives Application and fees; 300 KAR 2:040
Parks; Department of *(See Parks; Department of)*
Fish and Wildlife Recourses, Kentucky Department of *(See Fish and Wildlife Resources, Kentucky Department of)*

TRANSPORTION CABINET
Motor Carriers
Special overweight or overdimensional permits; 601 KAR 1:018
Motor Vehicle Tax
Registration of motor vehicle dealers and manufacturer; 601 KAR 9:015
Temporary registration plates; 601 KAR 9:140
Tilting of all-terrain vehicles; 601 KAR 9:205
Office of Audits
Road Fund Audits; Division of
Recordkeeping and audit requirements of taxes imposed in KRS 138.655 through 138.7291; 601 KAR 1:201
Secretary, Office of
Bicycle and bikeway program; 601 KAR 14:030

WORKFORCE INVESTMENT, DEPARTMENT OF
Administration
Priority of deductions from benefits; 787 KAR 1:320
Rehabilitation technology services; 781 KAR 1:040
Unemployed worker's reporting requirements; 787 KAR 1:090
Office of Employment and Training
Confidentially of records of the Office of Employment and Training; 787 KAR 2:020

WASTE MANAGEMENT, DIVISON OF
Solid Waste Planning
Solid waste grant funds and solid waste collector and recycler registration; 401 KAR 49:080

WORKFORCE STANDARDS, DEPARTMENT OF
Occupational Safety and Health Compliance, Division of
Adoption of 29 C.F.R. 1926.1-29, 1926.4, and 1926.6; 803 KAR 2:400
Adoption of 29 C.F.R. Part 1926.850-860; 803 KAR 2:419
Adoption of 29 C.F.R. Part 1926.950-960; 803 KAR 2:421
Adoption of 29 C.F.R. Part 1926.1050-1060; 803 KAR 2:423
Appendix A to 29 C.F.R. Part 1926; 803 KAR 2:430
Cranes and Derricks in construction; 803 KAR 2:505
Cranes and Derricks used in demolition and underground construction; 803 KAR 2:550
Electrical; 803 KAR 2:318
Fall protection; 803 KAR 2:412
General; 803 KAR 2:300
General safety and health provisions; 803 KAR 2:402
Maritime employment; 803 KAR 2:500
Motor vehicles, mechanized equipment, and marine operations; 803 KAR 2:414
Occupational health and environmental controls; 803 KAR 2:306

Personal protective equipment; 803 KAR 2:308
Scaffolds; 803 KAR 2:411
Subpart N-Helicopters, hoists, elevators, and conveyors; 803 KAR 2:413
Steel erection; 803 KAR 2:417
Toxic and hazardous substances; 803 KAR 2:320
Toxic and hazardous substances; 803 KAR 2:425
Underground construction, caissons, cofferdams, and compressed air; 803 KAR 2:418
Welding, cutting, and brazing; 803 KAR 2:316
Department of Workers' Claims
Workers' compensation hospital fee schedule; 803 KAR 25:091
Workers' compensation medical fee schedule for physicians; 803 KAR 28:089