## PROPOSED AMENDMENTS RECEIVED THROUGH NOON, NOVEMBER 15, 2000:

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## NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, NOVEMBER 15, 2000:

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**November 14, 2000 Minutes of the ARRS:**

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## MEETING NOTICE

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on December 12, 2000, at 10 a.m. in Room 149 of the Capitol Annex. See tentative agenda on pages 1419-1422 of this Administrative Register.
The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2000 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

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

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VOLUME 27, NUMBER 6 – DECEMBER 1, 2000
ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - December 12, 2000 at 10:00 a.m., Room 149, Capitol Annex

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Early Childhood Development Scholarship Program
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11 KAR 16:040. Early Childhood Development Scholarship Program recordkeeping requirements.
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13 KAR 1:030 & E. Campus security. ("E" expires 2/19/01)

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13 KAR 2:090. Kentucky Educational Excellence Scholarship (KEES) Program.
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Medical Examination of Sexual Abuse Victims
40 KAR 3:010 & E. Payment schedule to hospitals, physicians and sexual assault nurse examiners for medical examination of victims of sexual offenses. ("E" expires 1/19/01)

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103 KAR 28:140E. Telephonic and telegraphic communications and services. ("E" expires 12/28/00) (Deferred from August)

Selective Excise Tax; Motor Vehicle Usage
103 KAR 44:060. Motor vehicle usage tax valuation. (Deferred from November)

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201 KAR 9:021E. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees. ("E" expires 1/19/01) (Deferred from September)

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201 KAR 16:100. Examination.

Board of Physical Therapy
201 KAR 22:070. Requirements for foreign-educated physical therapists.

Board of Certification for Professional Counselors
201 KAR 36:020. Fees - renewal date.
201 KAR 36:070. Education requirements. (Deferred from November)

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301 KAR 2:178E. Deer hunting on wildlife management areas. ("E" expires 4/21/01)
301 KAR 2:255E. Dove, wood duck, teal and other migratory game bird hunting. ("E" expires 3/21/01) (Deferred from November)
301 KAR 2:222E. Youth waterfowl hunting season. ("E" expires 4/21/01)

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301 KAR 3:100E. Special commission permits. ("E" expires 4/21/01)

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301 KAR 5:030E. Purchasing licenses and obtaining replacement licenses. ("E" expires 3/21/01) (Deferred from November)

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302 KAR 45:010. Ginseng, general provisions. (Deferred from November)

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307 KAR 7:020. Eligibility requirements for qualified zone.
307 KAR 7:030. Eligibility requirements for amendment to qualified zone boundary.
307 KAR 7:040. Decertification of qualified zone.
307 KAR 7:050. Economic Opportunity Zone Act Tax Credit Program
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Air Quality - General Administrative Procedures
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401 KAR 52:001. Definitions for 401 KAR Chapter 52. (Amended After Hearing)
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401 KAR 52:040. State-origin permits. (Amended After Hearing)
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415 KAR 1:080. Claims procedures.

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702 KAR 1:150 & E. Employment of retired teachers in critical shortage areas. ("E" expires 2/19/01)

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704 KAR 3:490 & E. Teachers' Professional Growth Fund. ("E" expires 2/19/01)
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803 KAR 25:110E. Workers' compensation managed health care plans. ("E" expires 4/21/01)
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804 KAR 4:015. Interlocking interest between licensees prohibited.
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806 KAR 4:010E. Fees of the Department of Insurance. ("E" expires 3/21/01)

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806 KAR 9:001E. Prolonging courses of studies; instructors. ("E" expires 3/21/01) (Deferred from November)
806 KAR 9:060 & E. Identification cards. ("E" expires 1/19/01)
806 KAR 9:070E. Examinations. ("E" expires 3/21/01) (Deferred from November)
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806 KAR 9:200 & E. Volume of insurance agent exchange of business. ("E" expires 1/19/01)
806 KAR 9:210 & E. Time limit for replacement of evidence of licensee financial responsibility. ("E" expires 1/19/01)
806 KAR 9:220E. Continuing education. ("E" expires 3/21/01) (Deferred from November)
806 KAR 9:290 & E. Specialty credit insurance producer and managing employee. ("E" expires 1/19/01)
806 KAR 9:290E. Rental vehicle agent. ("E" expires 3/21/01) (Deferred from November)
806 KAR 9:290E. Business entity election. ("E" expires 3/21/01) (Deferred from November)
806 KAR 9:300E. Current licensees in good standing to receive equivalent license. ("E" expires 3/21/01) (Deferred from November)

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806 KAR 11:010 & E. Industrial insured, government entity insured, and exempt commercial policyholder. ("E" expires 1/19/01)

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806 KAR 13:140 & E. Property and casualty rate and rule filings. ("E" expires 1/19/01)

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806 KAR 14:005 & E. Rate and form filing for life and health insurers. ("E" expires 1/19/01)
806 KAR 14:006 & E. Property and casualty insurance form filings. ("E" expires 1/19/01)

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806 KAR 17:180E. Standard health benefit plan and comparison format. ("E" expires 1/19/01)
806 KAR 17:220E. Approval criteria and requirements for reentry into the Kentucky health insurance market. ("E" expires 1/19/01)
806 KAR 17:230E. Requirements regarding medical director's signature on health care benefit denials. ("E" expires 1/19/01)
806 KAR 17:230E. Conversion policy minimum benefits. ("E" expires 1/19/01)
806 KAR 17:230E. Registration, utilization review, and internal appeal. ("E" expires 1/19/01)
806 KAR 17:250E. Independent external review program. ("E" expires 1/19/01)
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806 KAR 20:010. Declination, cancellation, and nonrenewal of property and casualty insurance.
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806 KAR 38:020 & E. Health maintenance organization agent license. ("E" expires 1/19/01)

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808 KAR 10:410. Viatical settlement interests. (Public Hearing in October)

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810 KAR 1:026E. Racing associations. ("E" expires 4/21/01)
810 KAR 1:027E. Entries, subscriptions, and declarations. ("E" expires 4/21/01)
810 KAR 1:028E. Disciplinary measures. ("E" expires 4/21/01)

Harness Racing
811 KAR 1:075E. Racing and track rules. ("E" expires 4/21/01)

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815 KAR 20:020. Parts or materials list.

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900 KAR 6:050E. Certificate of need administrative regulation. ("E" expires 4/21/01)

Office of Administrative Services
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901 KAR 5:050E. Fees for searches, certified copies of certificates and records. ("E" expires 1/19/01) (Deferred from September)

Department for Public Health
Communicable Diseases
902 KAR 2:060. Immunization schedules.

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902 KAR 4:065E. Newborn Hearing Screening Equipment Grant Award. ("E" expires 4/21/01) (Deferred from November)
902 KAR 4:120 & E. Health Access Nurturing Development Services (HANDS) Program. ("E" expires 1/19/01)

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902 KAR 10:060E. On-site sewage disposal application fee. ("E" expires 4/21/01)
902 KAR 10:121E. Inspection fees for public swimming and bathing facilities. ("E" expires 4/21/01)
State Health Plan
902 KAR 17:040. Data reporting by health care providers.

Health Services and Facilities
902 KAR 20:008E. License procedures and fee schedule. ("E" expires 2/19/01)
902 KAR 20:060E. Operation and services; adult day health care programs. ("E" expires 4/21/01)

Food and Cosmetics
902 KAR 45:005E. Kentucky bed and breakfast. ("E" expires 4/21/01)
902 KAR 45:109E. Permits and fees for retail food establishments, food manufacturing plants, food storage warehouses, salvage processors and distributors, vending machine companies, and seasonal restricted food concessions. ("E" expires 4/21/01)
902 KAR 45:120E. Inspection fees; permit fees; hotels, mobile home parks, recreational vehicle parks, youth camps and private water supplies. ("E" expires 4/21/01)

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907 KAR 1:013E. Payments for hospital inpatient services. ("E" expires 4/21/01)
907 KAR 1:019E. Pharmacy services. ("E" expires 4/21/01)
907 KAR 1:145E. Supports for community living services for an individual with mental retardation or a developmental disability ("E" expires 2/19/01) (Deferred from November)
907 KAR 1:155E. Payments for supports for community living services for an individual with mental retardation or a developmental disability. ("E" expires 2/19/01) (Deferred from November)
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907 KAR 1:320E. Kentucky patient access and care system (KenPAC). ("E" expires 1/19/01) (Deferred from September)
907 KAR 1:475E. Repeal of 907 KAR 1:470, 907 KAR 1:472 and 907 KAR 1:474. ("E" expires 1/19/01) (Will not be replaced by an ordinary) (Deferred from September)
907 KAR 1:478E. Durable medical equipment covered services and reimbursement. ("E" expires 1/19/01) (Deferred from September)
907 KAR 1:636. Repeal of 907 KAR 1:635.

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907 KAR 3:030E. Coverage and payments for IMPACT Plus services. ("E" expires 2/19/01) (Deferred from November)
907 KAR 3:125E. Chiropractic services and reimbursement. ("E" expires 4/21/01)

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908 KAR 3:050 & E. Per diem rate pursuant to the "Patient Liability Act of 1978." ("E" expires 2/19/01)

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922 KAR 1:360 & E. Private child care placements, levels of care and payment. ("E" expires 1/19/01)

OTHER BUSINESS:

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State Health Plan
902 KAR 17:041. State Health Plan for facilities and services.
Notice of Intent
Administrative bodies shall file with the Regulations Compiler a Notice of Intent to promulgate an administrative regulation, including date, time and place of a public hearing on the subject matter to which the administrative regulation applies. This Notice of Intent, along with the public hearing information, shall be published in the Administrative Register. This Notice has to be filed and published in the Administrative Register, and the public hearing held or cancelled, prior to the filing of an administrative regulation.

After the scheduled hearing date, if held, the administrative body shall file with the Regulations Compiler a Statement of Consideration, setting forth a summary of the comments made at the public hearing, and the responses by the administrative body. This Statement shall not be published in the Administrative Register.

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

Public Hearing
The administrative body shall schedule a public hearing on proposed administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) working days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body’s responses to the comments.

No transcript of the hearing need to be taken 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
If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, 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 thirty (30) days after being referred by LRC, whichever occurs first.
EXECUTIVE BRANCH ETHICS COMMISSION

November 9, 2000

(1) 9 KAR 1:010, Statement of financial disclosure.

(2) The Executive Branch Ethics Commission intends to amend an existing regulation governing the above subject matter.

(3) A public hearing to receive oral and written comments has been scheduled for Thursday, December 21, 2000 at 1 p.m. in Room 258, Capitol Annex, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to December 21, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna Dutton, General Counsel, Executive Branch Ethics Commission, Room 258, Capitol Annex, Frankfort, Kentucky 40601. (502) 564-7954 fax: (502) 564-2686.

(b) On a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides a person who desires to be informed of the intent of an administrative body to repeal an existing administrative regulation governing a subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Executive Branch Ethics Commission at the address listed above.

(7) Information relating to the existing administrative regulation.

(a) The authority for promulgation of an administrative regulation relating to 9 KAR 1:010, Statement of financial disclosure, is KRS 11A.110(3).

(b) The administrative regulation that the Executive Branch Ethics Commission intends to amend is an existing administrative regulation. This regulation prescribes the forms for filing statements of filing disclosure.

(c) The necessity and function of the amendment is as follows: KRS 11A.050 mandates that each officer as defined in KRS 11A.010(7), public servant as listed in KRS 11A.010(9), and candidate for the public offices listed in KRS 11A.010(9) file a statement of financial disclosure with the commission. KRS 11A.050(2) requires the commission to prescribe the form for the statement of financial disclosure. This regulation prescribes the forms for filing statements of financial disclosure and incorporates it by reference. This amendment incorporates by reference a revised form that includes amendments made to KRS Chapter 11A during the 2000 General Assembly.

(d) The benefits expected from the amendment are: This regulation will be consistent with changes made to KRS Chapter 11A during the 2000 General Assembly.

(e) The administrative regulation will be implemented as follows: The Executive Branch Ethics Commission will be responsible for implementing this administrative regulation.

November 9, 2000

(1) 9 KAR 1:015, Preadjudicatory proceedings.

(2) The Executive Branch Ethics Commission intends to amend an existing regulation governing the above subject matter.

(3) A public hearing to receive oral and written comments has been scheduled for Thursday, December 21, 2000 at 1 p.m. in Room 258, Capitol Annex, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

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(6)(a) KRS Chapter 13A provides a person who desires to be informed of the intent of an administrative body to repeal an existing administrative regulation governing a subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Executive Branch Ethics Commission at the address listed above.

(7) Information relating to the existing administrative regulation.

(a) The authority for promulgation of an administrative regulation relating to 9 KAR 1:015, Preadjudicatory proceedings, is KRS 11A.110(3).

(b) The administrative regulation that the Executive Branch Ethics Commission intends to amend is an existing administrative regulation. This regulation establishes procedures relating to investigations that are not established by KRS Chapter 11A.

(c) The necessity and function of the amendment is as follows: KRS 11A.080 requires the commission to investigate violations of KRS Chapter 11A, upon complaint or its own motion, and establishes a number of procedures for the filing of complaints and commission investigations. In order to implement the investigation of complaints mandated by KRS 11A.080, this administrative regulation establishes procedures relating to investigations that are not established by KRS Chapter 11A. The amendment allows the commission to dismiss a complaint if the facts stated in the complaint fail to establish a violation of KRS Chapter 11A.

(d) The benefits expected from the amendment are: This regulation will allow the commission to not be required to investigate complaints where there is no violation of KRS Chapter 11A alleged.

(e) The administrative regulation will be implemented as follows: The Executive Branch Ethics Commission will be responsible for implementing this administrative regulation.
November 9, 2000

(1) 9 KAR 1:040, Registration and expenditure statements; financial transactions and termination forms; handbook; and enforcement.
(2) The Executive Branch Ethics Commission intends to amend an existing regulation governing the above subject matter.
(3) A public hearing to receive oral and written comments has been scheduled for Thursday, December 21, 2000 at 1 p.m. in Room 258, Capitol Annex, Frankfort, Kentucky 40601.
(a) The public hearing will be held if:
   1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
   2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to December 21, 2000, the public hearing will be canceled.
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(b) On a request for a public hearing, a person shall state:
   1. "I agree to attend the public hearing." or
   2. "I will not attend the public hearing."
(c) KRS Chapter 13A provides a person who desires to be informed of the intent of an administrative body to repeal an existing administrative regulation governing a subject matter may file a request to be informed by the administrative body.
(b) Persons who wish to file this request may obtain a request form from the Executive Branch Ethics Commission at the address listed above.
(7) Information relating to the existing administrative regulation.
(a) The authority for promulgation of an administrative regulation relating to 9 KAR 1:040, Registration and expenditure statements; financial transactions and termination forms; handbook; and enforcement, is KRS 11A.110(3).
(b) The administrative regulation that the Executive Branch Ethics Commission intends to amend is an existing administrative regulation. This regulation establishes forms and handbooks required by KRS Chapter 11A.
(c) The necessity and function of the amendment is as follows: KRS 11A.241(4) requires the Executive Branch Ethics Commission to prescribe the initial registration statement and the termination notice required by KRS 11A.211, the statement of expenditures required by KRS 11A.216, and the statement of financial transaction required by KRS 11A.221. This administrative regulation establishes these forms. KRS 11A.241(5) requires the commission to publish a handbook that explains the provisions of KRS 11A.201 to KRS 11A.246. This administrative regulation establishes that handbook. This amendment incorporates by reference the new forms and handbook that include changes made to the KRS Chapter 11A during the 2000 General Assembly.
(d) The benefits expected from the amendment are: This regulation will be consistent with changes made to KRS Chapter 11A during the 2000 General Assembly.
(e) The administrative regulation will be implemented as follows: The Executive Branch Ethics Commission will be responsible for implementing this administrative regulation.

November 9, 2000

(1) 9 KAR 1:050, Approval of outside employment of a public servant.
(2) The Executive Branch Ethics Commission intends to amend an existing regulation governing the above subject matter.
(3) A public hearing to receive oral and written comments has been scheduled for Thursday, December 21, 2000 at 1 p.m. in Room 258, Capitol Annex, Frankfort, Kentucky 40601.
(a) The public hearing will be held if:
   1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
   2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to December 21, 2000, the public hearing will be canceled.
(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna Dutton, General Counsel, Executive Branch Ethics Commission, Room 258, Capitol Annex, Frankfort, Kentucky 40601. (502) 564-7954 fax: (502) 564-2686.
(b) On a request for a public hearing, a person shall state:
   1. "I agree to attend the public hearing." or
   2. "I will not attend the public hearing."
(c) KRS Chapter 13A provides a person who desires to be informed of the intent of an administrative body to repeal an existing administrative regulation governing a subject matter may file a request to be informed by the administrative body.
(b) Persons who wish to file this request may obtain a request form from the Executive Branch Ethics Commission at the address listed above.
(7) Information relating to the existing administrative regulation.
(a) The authority for promulgation of an administrative regulation relating to 9 KAR 1:050, Approval of outside employment of a public servant, is KRS 11A.110(3).
(b) The administrative regulation that the Executive Branch Ethics Commission intends to amend is an existing administrative regulation. This regulation establishes procedure for approval of outside employment of a public servant as required by KRS 11A.040(9).
(c) The necessity and function of the amendment is as follows: KRS 11A.040(9) requires the appointing authority to review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant.
(d) The benefits expected from the amendment are: This regulation will be consistent with the current law.
(e) The administrative regulation will be implemented as follows: The Executive Branch Ethics Commission will be responsible for implementing this administrative regulation.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

November 13, 2000

(1) 200 KAR 2.006, Employees' reimbursement for travel.
(2) The Finance and Administration Cabinet intends to promulgate an amendment to the administrative regulation cited above.
(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for December 27, 2000, at 10 a.m. in Room 386, Capitol Annex, Frankfort, Kentucky 40601.
(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to the hearing date, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Ed Ross, Controller, Finance and Administration Cabinet, Office of the Controller, Room 384 Capitol Annex, Frankfort, Kentucky 40601, Phone (502) 564-2210, FAX (502) 564-6597.

(b) On a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing;"; or
2. "I will not attend the public hearing."

(5)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file the request may obtain a request form from the Office of the Secretary at the following address: Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660 Phone, (502) 564-9875 Fax.

(7) Information relating to the proposed administrative regulation:
(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 44.060 and 45.101.
(b) The proposed amendment to this administrative regulation will delete the prohibition against reimbursing an employee for lodging and meals within 40 miles of the employee's work station or home, if such reimbursement is approved in advance by the employee's agency head and increase the mileage reimbursement.
(c) The necessity and function of the proposed administrative regulation is as follows: The Finance and Administration Cabinet is directed by law to coordinate and supervise the fiscal affairs and procedures of the state and is authorized to adopt administrative regulations for that purpose.
(d) The benefit expected from this proposed administrative regulation is as follows: The regulation is intended to reimburse employees and others in the official service of the Commonwealth in a fair and just manner.
(e) This administrative regulation will be implemented by the Finance and Administration Cabinet and all affected agencies of the Commonwealth by adherence to the amended administrative regulation.

BOARD OF LICENSURE FOR SPECIALISTS IN HEARING AID INSTRUMENTS

November 15, 2000

(1) 201 KAR 7:015. Fees. This proposed amended administrative regulation amends the licensure fees for initial applicants and renewals for licensees of the board.

(2) The Kentucky Board of Board of Licensure for Specialists in Hearing Aid Instruments intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 2000, at 4 p.m., Kentucky Board of Licensure for Specialists in Hearing Aid Instruments, Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

(4) (a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 business days prior to December 21, 2000, on December 11, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Nancy L. Black, Director, Division of Occupations and Professions License Director, Kentucky Board of Licensure for Specialists in Hearing Instruments, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Phone (502) 564-3296, ext. 224, Fax (502) 564-4818.

(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing;"; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy L. Black at the address above.

(7) Information relating to the proposed administrative regulation:
(a) The statutory authority for the promulgation of an administrative regulation relating to fees is KRS 334.050, 334.080, 334.090, 334.110, 334.150

(b) The administrative regulation the Kentucky Licensing Board for Specialists in Hearing Instruments intends to promulgate will amend the licensure fees for initial applicants and renewals for licensees of the board.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will amend the licensure fees for initial applicants and renewals for licensees of the board.

(d) The benefit expected from this administrative regulation is the increased operation of the board as an independent, self-funded governmental entity without any reliance on general fund dollars.

(e) The regulation will be implemented by the executive director and board administrator who are charged with overseeing the license application and renewal process.

November 15, 2000

(1) 201 KAR 7:040. Examinations. This proposed amended administrative regulation amends the examination process required of initial applicants for licensure.

(2) The Kentucky Board of Board of Licensure for Specialists in Hearing Aid Instruments intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 2000, at 4 p.m., Kentucky Board of Licensure for Specialists in Hearing Aid Instruments, Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 business days prior to December 21, 2000, on December 11, 2000, the public hearing will be canceled.

5(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Nancy L. Jack, Director, Division of Occupations and Professions Executive Director, Kentucky Licensing Board for Specialists in Hearing Instruments, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Phone (502) 556-3296, ext. 224, Fax (502) 554-4818.

(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
(b) Persons who wish to file this request may obtain a request form from Nancy L. Black at the address above.

(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation relating to examinations are KRS 334.060(1), 334.070, 334.080, 334.090(4), 334.150(2), (7), (8), (9).

(b) The administrative regulation the Kentucky Licensing Board for Specialists in Hearing Instruments intends to promulgate will amend the examination process for applicants for initial licensure.
(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will amend the examination process for applicants for initial licensure.
(d) The benefit expected from this administrative regulation is the increased flexibility in allowing applicants to sit for the examination required for initial licensure.
(e) The regulation will be implemented by the executive director and board administrator who are charged with overseeing the license application and examination process.

BOARD OF PHYSICAL THERAPY

October 23, 2000

1. 201 KAR 22:020, Method of applying for licensure.
2. The Board of Physical Therapy intends to amend the administrative regulation cited above.
3. A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 2000 at 9 a.m.(EST), at the office of the Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons or the administrative body or association, agree in writing to be present at the public hearing.
(b) If a request for a public hearing and agreement to attend the public hearing is not received at least 10 days prior to December 22, 2000, the public hearing will be canceled.

(c) Persons wishing to request a public hearing should mail their written request to the following address: Rebecca Kluusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Telephone: (502) 327-8497; Fax: (502) 423-0934.

(d) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
(b) Persons who wish to file this request may obtain a request form from Rebecca Kluusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation is KRS 327.040.
(b) The administrative regulation that the Board of Physical Therapy intends to promulgate will amend 201 KAR 22:020, an existing administrative regulation.
(c) The necessity and function of the proposed administrative regulation is within KRS 327.050, 327.060 and 327.080. This will amend the language of the method of applying for a license which will amend it to current terminology.
(d) The benefit expected from this administrative regulation is that terminology will be current.
(e) The administrative regulation will be implemented as follows: Through the normal administrative procedures of the agency.

October 23, 2000

1. 201 KAR 22:040, Procedure for renewing licenses.
2. The Board of Physical Therapy intends to amend the administrative regulation cited above.
3. A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 2000 at 9 a.m.(EST), at the office of the Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons or the administrative body or association, agree in writing to be present at the public hearing.
(b) If a request for a public hearing and agreement to attend the public hearing is not received at least 10 days prior to December 22, 2000, the public hearing will be canceled.

(c) Persons wishing to request a public hearing should mail their written request to the following address: Rebecca Kluusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222; Telephone: (502) 327-8497; Fax: (502) 423-0934.

(d) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
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(b) Persons who wish to file this request may obtain a request form from Rebecca Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation is KRS 327.040.

(b) The administrative regulation that the Board of Physical Therapy intends to promulgate will amend 201 KAR 22:040, an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is within KRS 327.060. This will amend the language of the procedure for renewing licenses which will amend it to current terminology.

(d) The benefit expected from this administrative regulation is that terminology will be current.

(e) The administrative regulation will be implemented as follows: Through the normal administrative procedures of the agency.

October 23, 2000

(1) 201 KAR 22:061, Endorsement.

(2) The Board of Physical Therapy intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 2000 at 9 a.m. (EST), at the office of the Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by a least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons or the administrative body or association, agree in writing to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing is not received at least 10 days prior to December 22, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rebecca Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Telephone: (502) 327-8497; Fax: (502) 423-0934.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from Rebecca Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation is KRS 327.040.

(b) The administrative regulation that the Board of Physical Therapy intends to promulgate will amend 201 KAR 22:061, an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is within KRS 327.040 and 327.080. This will amend the language of the method of endorsement which will amend it to current terminology.

(d) The benefit expected from this administrative regulation is that terminology will be current.

(e) The administrative regulation will be implemented as follows: Through the normal administrative procedures of the agency.

November 14, 2000

(1) 201 KAR 22:150, Impaired Physical Therapy Practitioners Committee (IPTPC).

(2) The Board of Physical Therapy intends to promulgate the new administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 2000 at 9 a.m. (EST), at the office of the Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by a least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons or the administrative body or association, agree in writing to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing is not received at least 10 days prior to December 22, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Becky Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Telephone: (502) 327-8497; Fax: (502) 423-0934.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from Becky Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation is a new , section of KRS 327.045 pertaining to the Committee for Impaired Physical Therapy Practitioners.

(b) The administrative regulation that the Board of Physical Therapy intends to create 201 KAR 22:150, a new administrative regulation.

(c) The necessity and function of the proposed administrative regulation is within KRS Chapter 327.

(d) The benefit expected from this new administrative regulation is to promulgate KRS 327.045 and to define how the committee for impaired physical therapy practitioners will operate.

(e) The administrative regulation will be implemented as follows: Through the normal administrative procedures of the agency.

November 14, 2000

(1) 201 KAR 22:160, Telehealth.

(2) The Board of Physical Therapy intends to promulgate the new administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 2000 at 9 a.m. (EST), at the office of the Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(4)(a) The public hearing will be held if:
1. It is requested, in writing, by a least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree in writing to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing is not received at least 10 days prior to December 22, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Becky Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Telephone: (502) 327-8687, Fax: (502) 423-0934

(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing".

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from Becky Klusch, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation is a new section of KRS 327.200 pertaining to telehealth.
(b) The administrative regulation that the Board of Physical Therapy intends to create 201 KAR 22:163, a new administrative regulation.
(c) The necessity and function of the proposed administrative regulation is within KRS 327.
(d) The benefit expected from this new administrative regulation is to promulgate KRS 327.200 and to define telehealth as it pertains to physical therapy.
(e) The administrative regulation will be implemented as follows: Through the normal administrative procedures of the agency.

KENTUCKY BOARD OF CERTIFICATION OF ALCOHOL AND DRUG COUNSELORS

November 14, 2000

(1) 201 KAR 35:020. Fees.
(2) The Kentucky Board of Certification of Alcohol and Drug Counselors intends to promulgate an administrative regulation governing the subject matter listed above.
(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 2000, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky.

(a) The public hearing will be held:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 21, 2000, the public hearing will be canceled.

(a) Persons wishing to request a public hearing should mail their written requests to the following address: Nancy Black, Director, Division of Occupations and Professions, PO Box 1360, Frankfort, Kentucky 40602-0406, Telephone No. (502) 564-3255, Telefax No. (502) 564-4818.
(b) On request for public hearing, a person shall state:
1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing".

(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
(b) Persons who wish to file this request may obtain a request form by writing to Nancy Black at the above address, or by calling (502) 564-3295 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation relating fees is KRS 309.0813(1) and (12).
(b) The administrative regulation that the Kentucky Board of Certification of Alcohol and Drug Counselors intends to promulgate will be amend an existing regulation. It will detail all fees necessary for certification from the board.
(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 306.0813(1) and (12) require the board to set out in administrative regulations certain fees. This administrative regulation amendment will set forth these fees.
(d) The benefit expected from this administrative regulation is that the fees will enable the board to cover expenses associated with administering KRS Chapter 309.
(e) This administrative regulation will be implemented as follows: Applicants for certification and renewals will be required to remit the fee with their applications.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

November 15, 2000

(1) 401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65. The subject matter of this administrative regulation is the establishment of definitions for terms used in 401 KAR Chapter 65.
(2) The Division for Air Quality intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.
(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for December 22, 2000, at 10 a.m. (Eastern Time), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

(a) The public hearing will be held if it is requested at least 10 calendar days prior to December 22, 2000, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree to be present at the public hearing.
(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to December 22, 2000, the public hearing will be canceled.
(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

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(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The FAX number is (502) 573-3787. The telephone number is (502) 573-3382, extension 338.

(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the proposed administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-710 to 224.20-765.

(b) The amendment to the administrative regulation that the Division for Air Quality intends to promulgate will add the terms used in 401 KAR 65:010, Vehicle emission control programs.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms to be used in 401 KAR Chapter 65. It is being amended to include terms currently contained in 401 KAR 65:010 to bring this administrative regulation into compliance with KRS Chapter 13A drafting requirements.

(d) The expected benefit from the proposed administrative regulation is that 401 KAR Chapter 65 will be brought into compliance with KRS Chapter 13A drafting requirements.

(e) The proposed administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the administrative regulations in 401 KAR Chapter 65 will use these definitions as part of the existing regulatory program.

November 15, 2000

(1) 401 KAR 65:010, Vehicle emission control programs. The subject matter of this administrative regulation is the establishment of requirements for vehicle emission control programs in Kentucky.

(2) The Division for Air Quality intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for December 22, 2000, at 10 a.m. (Eastern Time), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested at least 10 calendar days prior to December 22, 2000, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or 1 person representing an administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to December 22, 2000, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The FAX number is (502) 573-3787. The telephone number is (502) 573-3382, ext. 338.

(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Division for Air Quality at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the proposed administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-710 to 224.20-765.

(b) The amendment to the administrative regulation that the cabinet intends to promulgate will establish guidelines for a fee exemption for vehicles belonging to military personnel.

(c) The necessity and function of the proposed amendment is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The proposed administrative regulation will establish guidelines for a fee exemption for vehicles belonging to military personnel.

(d) The expected benefit from the proposed administrative regulation is that relief from the assessment of fees will be provided to military personnel.

(e) The proposed administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, owners and operators of vehicles in an area where a vehicle inspection and maintenance program has been established shall comply with the amended 401 KAR 65:010 as part of the existing regulatory program.

JUSTICE CABINET
Department of Corrections

November 14, 2000

1. 501 KAR 3:130, Inmate programs; services.

2. The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.

3. A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 2000, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky.
(4)(a) The public hearing will be held:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 5 days prior to December 21, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing shall mail their written request to the following address: Justice Cabinet, Department of Corrections, Tamela Biggs, Staff Attorney, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40622-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing:" or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.

(7) Information relating to the proposed administrative regulation:
(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 198.035, 197.020 and 441.055.
(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 3:130, as follows: State inmates shall have the opportunity to obtain a GED, participate in on-the-job training work programs and an opportunity to participate in substance abuse programs.
(c) The necessity and function of the proposed administrative regulation is as follows:
1. KRS 196.035, 197.020, and 441.055 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
2. This administrative regulation complies with KRS Chapter 13A and expands programs and services available to the inmate population.
(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.
(e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

November 14, 2000

(1) 501 KAR 6:999, Department of Corrections secured policies and procedures.
(2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) There shall be no public hearing on these regulations as they relate to secured policies under the provisions of KRS 197.025 which states that these policies shall not be accessible to the public or inmates.

(4) Information relating to these proposed administrative regulations:
(a) The statutory authority for the promulgation of these administrative regulations relating to the subject matter of these administrative regulations is KRS 196.035, 197.020, and 197.025.
(b) The administrative regulations that the Department of Corrections intends to promulgate shall delete secured policy from existing administrative regulation and establish 501 KAR 6:999, as follows:
1. Escape Plan (GRCC 08-03-01) shall be amended to correct typographic error and to better define sentence structure.
2. Emergency Squad: Selection, Training and Evaluation (GRCC 08-05-01) shall be amended to update reference sections, to better define the training hours, to change the times of evaluations, to better define sentence structure, correct typographic errors and the four attachments have been changed to comply with KRS Chapter 13A.
3. Response Units (GRCC 08-06-01) shall be deleted due to CPP 8.3, 8.4 and 8.5, and GRCC Emergency Preparedness Plan covering this subject matter.
4. Natural Disaster or Earthquake (GRCC 08-07-01) shall be amended to add GRCC to be used instead of 3 Green River Correctional Complex, to better define the actual process regarding reporting to the institution in the event of a disaster, to change areas of responsibility, to amend sentence structure to better explain policy and comply with KRS Chapter 13A requirements.
(c) The necessity and function of the proposed administrative regulation is as follows:
1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
2. This administrative regulation updates operating procedures at the Department of Correctional to comply with KRS Chapter 13A and to reflect current operating procedures.
3. KRS 197.025(5) provides: "The policies and procedures of administrative regulations of the department which address the security and control of inmates and penitentiaries shall not be accessible to the public or inmates. The Administrative Regulations Review Subcommittee's review process for these policies and procedures shall be conducted in closed sessions."
(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.
(e) This administrative regulation will be implemented as follows: Staff shall comply with operational procedures and standards noted in policy changes.

November 14, 2000

(1) 501 KAR 7:130, Inmate programs; services.
(2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 000, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 21, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Tamela Biggs, Staff Attorney, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

(b) On a request for public hearing, a person shall state:
   1. "I agree to attend the public hearing;" or
   2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.

(7) Information relating to the proposed administrative regulation:
   (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035, 197.020 and 441.055.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 7:130, as follows: State inmates shall have the opportunity to obtain a GED, participate in on-the-job training work programs and an opportunity to participate in substance abuse programs.

(c) The necessity and function of the proposed administrative regulation is as follows:
   1. KRS 196.035, 197.020, and 441.055 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
   2. This administrative regulation complies with KRS Chapter 13A and expands programs and services available to the inmate population.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

(e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

November 14, 2000

(1) 501 KAR 10:130, Inmate programs; services.
   (2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.

   (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 2000, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky.

   (4)(a) The public hearing will be held if:
      1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
      2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

   (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 21, 2000, the public hearing will be canceled.

   (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Tamela Biggs, Staff Attorney, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

   (b) On a request for public hearing, a person shall state:
      1. "I agree to attend the public hearing;" or
      2. "I will not attend the public hearing."

   (5)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

   (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.

   (7) Information relating to the proposed administrative regulation:
      (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035, 197.020 and 441.055.

   (b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 10:130, as follows: State inmates shall have the opportunity to obtain a GED, participate in on-the-job training work programs and an opportunity to participate in substance abuse programs.

   (c) The necessity and function of the proposed administrative regulation is as follows:
      1. KRS 196.035, 197.020, and 441.055 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
      2. This administrative regulation complies with KRS Chapter 13A and expands programs and services available to the inmate population.

   (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

   (e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

WORKFORCE DEVELOPMENT CABINET
Kentucky State Board for Proprietary Education

November 15, 2000

(1) 783 KAR 1:010. Standards for associate degree award. This proposed amended administrative regulation amends the associate degree and award standards for academic programs for schools licensed by the board.

(2) The Kentucky State Board for Proprietary Education intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 2000, at 3 p.m., Kentucky State Board for Proprietary Education, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.
(4)(a) The public hearing will be held if:
1. It is requested, in writing, by a least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 business days prior to December 21, 2000, by December 11, 2000, the public hearing will be canceled.
(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Roger Grim, Executive Director, Kentucky State Board for Proprietary Education, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Phone (502) 564-4233, Fax (502) 564-4818.
(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."
(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
(b) Persons who wish to file this request may obtain a request form from Roger Grim at the address above.
(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation relating to examinations are KRS 165A.310(4) and 165A.370(1)(e).
(b) The administrative regulation the Kentucky State Board for Proprietary Education intends to promulgate will amend the associate degree program and award standards.
(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will amend the process and documentation required for a school to change its associate degree program and award standards.
(d) The benefit expected from this administrative regulation is the increased flexibility in licensed schools changing associate degree program and award standards.
(e) The regulation will be implemented by the executive director and board administrator who are charged with overseeing the licensing process and associate degree program status of licensed schools.

November 15, 2000

(1) 783 KAR 1:040. Fees. This proposed amended administrative regulation will set various licensing and renewal fees for schools licensed and renewed by the Board.
(2) The Kentucky State Board for Proprietary Education intends to promulgate the administrative regulation cited above.
(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 2000, at 3 p.m., Kentucky State Board for Proprietary Education, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.
(4)(a) The public hearing will be held if:
1. It is requested, in writing, by a least 5 persons, an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 business days prior to December 21, 2000, by December 11, 2000, the public hearing will be canceled.
(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Roger Grim, Executive Director, Kentucky State Board for Proprietary Education, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Phone (502) 564-4233, Fax (502) 564-4818.
(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from Roger Grim at the address above.

(c) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to student complaint procedures is KRS 165A.400 and 165A.360(3)(b).

(b) The administrative regulation the Kentucky State Board for Proprietary Education intends to promulgate will mandate the steps that the board must take when a student files a complaint against a licensed school.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will set forth the steps that the Board must take when a student files a complaint against a licensed school.

(d) The benefit expected from this administrative regulation is the orderly process of handling student complaints as required by KRS 165A.360(3).

(e) The regulation will be implemented by the executive director and board administrator who are charged with overseeing the process to be undertaken when a student files a complaint with the board against a licensed school.

November 15, 2000

(1) 783 KAR 1:970. Transfer of ownership, change of location, change of curriculum, change of name. This proposed amended administrative regulation will mandate the various steps that the licensed school must complete when there has been a transfer of ownership, change of school name, change of location, or change of curriculum.

(2) The Kentucky State Board for Proprietary Education intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 2000, at 3 p.m., Kentucky State Board for Proprietary Education, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 business days prior to December 21, 2000, by December 11, 2000, the public hearing will be canceled.

(c) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Roger Grim, Executive Director, Kentucky State Board for Proprietary Education, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-4233, Fax: (502) 564-4818.

(d) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing;" or

2. "I will not attend the public hearing."

(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from Roger Grim at the address above.

(c) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to student complaint procedures is KRS 165A.400, 165A.360(9) and 165A.370.

(b) The administrative regulation the Kentucky State Board for Proprietary Education intends to promulgate will mandate the steps that the licensed school must take when it undertakes a transfer of ownership, change of school name, change of location, or change of curriculum.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will set forth the steps that the licensed school must complete when it undertakes a transfer of ownership, change of school name, change of location, or change of curriculum.

(d) The benefit expected from this administrative regulation is the orderly process of transfer of ownership, change of school name, change of location, or change of curriculum as required by KRS 165A.360(9) and 165A.370.

(e) The regulation will be implemented by the executive director and board administrator who are charged with overseeing the process to be completed when a school undertakes a transfer of ownership, change of school name, change of location, or change of curriculum.

Department for Employment Services

October 23, 2000

(1) 787 KAR 1:230. Due dates.

(2) The Cabinet for Workforce Development, Department for Employment Services, Division of Unemployment Insurance, intends to amend the administrative regulation cited above.

(a) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 20, 2000, at 9 a.m., in Conference Room A of the Commissioner's Office, 2nd Floor, 275 East Main Street, Frankfort, Kentucky 40601.

(b) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(c) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 28, 2000, the public hearing will be canceled.

(d) Persons wishing to request a public hearing should mail their written request to the following address: Margaret Whittem, Commissioner, Department for Employment Services, Cabinet for Workforce Development, 275 East Main Street, 2nd West, Frankfort, Kentucky 40601, Phone: (502) 504-531, Fax: (502) 504-7425.

(e) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing;" or

2. "I will not attend the public hearing."

(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Employment Services, 275 East Main Street, 2nd Floor East, Frankfort, Kentucky 40601.

(c) Information relating to the proposed administrative regulation:
(a) The statutory authority for the amendment of an administrative regulation relating to successorship is KRS 151B.020 and 341.115.

(b) The administrative regulation that the Department for Employment Services intends to amend is 787 KAR 1:230. Due dates. This administrative regulation is being amended to set forth procedures for dating reports or payments that are processed. This relates to unemployment insurance tax reports and payments where the envelope and the accompanying postmark are not considered in determining timeliness. Instead the imaging system will date the report or payment and give the filer party consideration for the time lost in delivery of the mail. The backdating of 5 business days should allow adequate delivery time for mail sent from any location within the United States.

(c) The necessity, function, and conformity of the regulation to be amended is as follows: This administrative regulation defines the date received by the department as used in KRS Chapter 341 and Kentucky administrative regulations as it relates to the timely filing of reports, protests, appeals, or the payment of contributions, and extends the due date when the due date falls on a day the office of the department is closed.

(d) The benefit expected from this administrative regulation is to allow the department to contract with other state agencies for payment and report processing and the imaging of those documents for use within the department.

KENTUCKY RACING COMMISSION

November 15, 2000

(1) 811 KAR 1:005. Definitions.

(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 27, 2000, 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 27, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Phone (859) 246-2040, Fax (859) 246-2039.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing".

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Kentucky Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.630(3), (4), and (7).

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:005, Definitions. It will clarify the definition of declarations.

(c) The necessity and function of the proposed administrative regulation is as follows: To update the definition of the term declarations. The benefits expected from administrative regulation are: To make the language easier and clearer to understand.

(d) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

November 15,2000

(1) 811 KAR 1:015. Race officials.

(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 27, 2000, 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

(4) (a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 27, 2000, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Phone 859-2040, Fax 859-2039.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing".

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Kentucky Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.240(1), 230.260(3), and 230.310.

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:015, Race officials. It will redefine the language of a bleed being placed on and removed from the veterinarian's list.

(c) The necessity and function of the proposed administrative regulation is as follows: To clarify when a horse that is a bleed is to be placed on the veterinarian's list and then removed from the veterinarian's list.

(d) The benefits expected from administrative regulation are: By amending this regulation to read the same as the thoroughbred regulation regarding bleeders will make it easier for the owners and trainers in understanding the procedure for bleeders.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.
November 15, 2000

(1) 811 KAR 1:020. Registration and identification of horses.
(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.
(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 27, 2000 at 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If a request or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 27, 2000, the public hearing will be cancelled.
(c) Persons wishing to request a public hearing should mail their written request to the following address: Renata Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Phone (859) 246-2040, Fax (859) 246-2039.

(a) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing".
(b) Persons who wish to file this request may obtain a request from the Kentucky Racing Commission at the address listed above.
(c) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.260.
(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:020. Registration and identification of horses. It will indicate in the racing program that are racing with hobbles.
(c) The necessity and function of the proposed administrative regulation is as follows: To inform the betting public if a trotter will be racing with hobbles.
(d) The benefits expected from administrative regulation are: This will be of benefit to the betting public when they are handicapping a race.
(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

November 15, 2000

(1) 811 KAR 1:055. Declaration to start; drawing horses.
(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.
(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 27, 2000, 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If a request or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 27, 2000, the public hearing will be cancelled.
(c) Persons wishing to request a public hearing should mail their written request to the following address: Renata Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Phone (859) 246-2040, Fax (859) 246-2039.

(a) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing".
(b) Persons who wish to file this request may obtain a request from the Kentucky Racing Commission at the address listed above.
(c) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.630(3), (4), and (7).
(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:055 Declaration to start; drawing horses. It will update language that is outdated.
(c) The necessity and function of the proposed administrative regulation is as follows: To update the language to conform to the rules of the United States Trotting Association.
(d) The benefits expected from administrative regulation are: Updating this regulation will help us be more uniform with other states that have standardized racing.
(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

November 15, 2000

(1) 811 KAR 1:080. Stimulants and drugs.
(2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.
(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 27, 2000, 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If a request or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 27, 2000, the public hearing will be cancelled.
(c) Persons wishing to request a public hearing should mail their written request to the following address: Renata Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Phone (859) 246-2040, Fax (859) 246-2039.

(a) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing".
(b) Persons who wish to file this request may obtain a request from the Kentucky Racing Commission at the address listed above.
(c) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.630(3), (4), and (7).
(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:080. Stimulants and drugs. It will update language that is outdated.
(c) The necessity and function of the proposed administrative regulation is as follows: To update the language to conform to the rules of the United States Trotting Association.
(d) The benefits expected from administrative regulation are: Updating this regulation will help us be more uniform with other states that have standardized racing.
(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

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The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.630(3), (4), and (7).

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:220, Harness racing at county fairs.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 27, 2000, 10 a.m. at the commission offices at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511.

(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 27, 2000, the public hearing will be canceled.

5(a) Persons wishing to request a public hearing should mail their written request to the following address: Rena Elswick, Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Phone: (859) 246-2040, Fax: (859) 246-2039.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing;".

(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Kentucky Racing Commission at the address listed above.

(c) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 230.630(3).

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:220, Harness racing at county fairs.

November 15, 2000

(1) 815 KAR 7:070, Requirements for certification of Kentucky building code inspectors.

The Department of Housing, Buildings and Construction intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, December 28, 2000, at 10 a.m., local time, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons or an administrative body or an association having at least 5 members; and
2. A minimum of 5 persons or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to December 28, 2000, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-3833.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing;".

(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the department’s general counsel at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.050(5).

(b) The department intends to amend this regulation to:

1. Add definition of "mechanical inspector" and certification category.
2. Delete definition of "limited certificate".
3. Change organization providing testing to "experior".
4. Increase continuing education from 5 hours to 12 hours, annually.
5. Increase application and renewal fee from $25 to $50 and add provision if fail to renew timely, additional $50 fee added.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 198B.090 requires the department to create and administer a building official's certification program which is designed to ensure uniform statewide enforcement of applicable state building codes. This administrative regulation establishes the testing, training and continuing education requirements for 2 designated professional classifications of building code inspectors; building inspector and plans and specifications inspector.

(d) The benefits expected from this administrative regulation are: The assurance that applicants will meet the minimum qualifications necessary to adequately enforce applicable building codes is essential to the consumer whose trust and confidence is in the inspector's ability to perform his duties.

(e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction.

CABINET FOR HEALTH SERVICES
Department for Public Health

November 15, 2000

(1) 902 KAR 4:030, Newborn screening for inborn errors of metabolism and other inherited disorders.
(2) Cabinet for Health Services, Department for Public Health intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 28, 2000, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 28, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing."

(9)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 4:030 is KRS 214.155.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 4:030 to establish procedures to be used by the Division of Adult and Child Health for the distribution to the uninsured of amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic diseases listed in subsection (1)(c) of House Bill 202.

(c) The necessity, function and conformity of the proposed administrative regulation is to amend 902 KAR 4:030 to bring the regulation into compliance with HB 202 which was passed into law and becomes effective July 14, 2000.

(d) The benefits expected from administrative regulation are to establish procedures to implement the law as enacted by HB 202.

(e) The administrative regulation will be implemented as follows: By the Division of Adult and Child Health, Department for Public Health, Cabinet for Health Services.

Department for Medicaid Services

November 15, 2000

(1) 1077 KAR 1:585, Psychiatric residential treatment facility services.
(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 28, 2000 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 28, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing;" or
2. "I will not attend the public hearing."
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(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Member and Provider Services, CHRS Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 907 KAR 1:505 are KRS 194A.030, 194A.050, 42 CFR 440.160.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:505, Psychiatric residential treatment facility services to comply with KRS 216B.455, and to make minor policy clarifications and technical changes.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth provisions relating to coverage of services for psychiatric residential treatment facility.

(d) The benefits expected from this administrative regulation are: To bring the Department for Medicaid Services into compliance with KRS 216B.455 to allow providers the option to be certified by the Joint Commission on Accreditation of Healthcare Organizations, or the Council on Accreditation, or any other accrediting body with comparable standards that is recognized by the state.

(e) The administrative regulation will be implemented as follows: By the Division of Behavioral Health Programs, Department for Medicaid Services, Cabinet for Health Services.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development

November 15, 2000

(1) 921 KAR 1:020, Child Support Program: confidentiality, program administration contracts and agreements.

(2) Cabinet for Families and Children, Department for Community Based Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 26, 2000, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or 1 person representing an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or 1 person representing the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to December 28, 2000, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kellie Peace, Regulation Coordinator, Office of the General Counsel, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-9126.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing;", or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community Based Services, Division of Policy Development, Third Floor West, CHRS Building, 275 East Main, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to child support program confidentiality, administration contracts and agreements is KRS 194B.050(1), 205.175, 205.710-205.800, 405.430(9), (13), 405.520, 405.035, 42 USC 651 et seq.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate will amend 921 KAR 1:020 to:

1. Clarify requirements regarding the safeguarding and disclosure of information.
2. Update material incorporated by reference, as needed.
3. The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to revise the procedures for safeguarding information and to make clarifying changes or technical amendments to comply with KRS Chapter 13A.

(d) The benefits expected from administratve regulation are: The amendments to this administrative regulation will assure cabinet compliance with the federal mandates on confidentiality in 26 USC 6103(a(b), 7213(a)(2); 42 USC 654(8)(B), 26(2); 655(b)(2) and (c); 45 CFR 303.70(d)(2) and state statutory requirements.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Community Based Services, will be responsible for implementing the administrative regulation.
ARRS = Administrative Regulation Review Subcommittee

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRIS, November 14, 2000)


RELATES TO: KRS 164.787 through 164.7885 [1998 Ky. Acts ch. 575, sec. 1 through sec. 6], 20 USC sec. 10701
STATUTORY AUTHORITY: KRS 164.748(4), 164.7885(7) [1998 Ky. Acts ch. 575, sec. 6(7)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honors scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) [1998 Ky. Acts ch. 575] requires the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence [Commonwealth-Merit] Scholarship Program. This administrative regulation establishes the definitions for 11 KAR Chapter 15.

Section 1. Definitions. (1) "Academic term" is defined in KRS 164.7874(1) and 13 KAR 2:090. Section 11(1) [1998 Ky. Acts ch. 575, sec. 5(1)]
(2) "Authority" is defined in KRS 164.7874(4) [1998 Ky. Acts ch. 575, sec. 2(4)].
(3) "Award period" is defined in KRS 164.7874(5) [1998 Ky. Acts ch. 575, sec. 2(5)].
(4) "Correspondence course" means a home study course that is:
(a) Provided by an educational institution; or except a course offered through the Kentucky Commonwealth Virtual University (KCVU); under whose institution provides instructional materials, including examinations on the materials, to students who are not physically attending classes at the institution;
(b) Meets the following requirements: [ ]
1. [(a)] When a student completes a portion of the instructional material, the student takes the examinations that relate to that portion of the materials, and return the examinations to the institution for grading; [ ]
2. [(b)] A home study course that provides instruction in or in part through the use of video cassettes or video discs in an academic year [shall be considered to be a correspondence course unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at an institution during the same academic year; and ]
3. [(c)] If a course is part correspondence and part residential training, the course shall be considered to be a correspondence course; and
(c) Does not include courses from the Kentucky Commonwealth Virtual University (KCVU).
(6) "Commonwealth Merit Scholarship Program officer" means the official designated on the administrative agreement pursuant to KRS 164.740(5) to serve as the participating institution's on-campus agent to certify all institutional transactions and activities with respect to the Commonwealth Merit Scholarship Program.
(6) "Eligible program of study" means, for purposes of enrollment in a participating institution, a postsecondary, undergraduate program that:
(a) Leads to a certificate, diploma, or associate or baccalaureate degree or in a degree program in a field of study that is not available at any participating institution in the Commonwealth but is offered an out-of-state institution designated by the council as an approved participating institution;
(b) May include study abroad or away from the main campus if the student pays tuition to, and is given academic credit by, the participating institution for the study, except that a correspondence course shall not be included; and
(c) Does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.
(7) "Eligible high school student" is defined in KRS 164.7874(7) [1998 Ky. Acts ch. 575, sec. 2(13)].
(8) "Eligible postsecondary student" is defined in KRS 164.7874(8).
(9) "Full-time student" is defined in KRS 164.7874(9) [1998 Ky. Acts ch. 575, sec. 2(14)].
(10) [(a)] "Grade point average" is defined in KRS 164.7874(10) [1998 Ky. Acts ch. 575, sec. 2(12)].
(11) "KEES" is defined in KRS 164.7874(12).
(12) "KEES Program officer" means the official designated on the administrative agreement pursuant to KRS 164.748(6) and 164.7874(7) to serve as the participating institution's on-campus agent to certify all institutional transactions and activities with respect to the Kentucky Educational Excellence Scholarship Program.
(13) "Kentucky Educational Excellence Scholarship" is defined in KRS 164.7874(14).
(14) [(a)] "Maximum award amount" is defined in KRS 164.7874(16) [1998 Ky. Acts ch. 575, sec. 2(14)].
(15) [(h)] "Participating institution" is defined in KRS 164.7874(17) [1998 Ky. Acts ch. 575, sec. 2(15)].
(16) [(h)] "Part-time student" is defined in KRS 164.7874(18) [1996 Ky. Acts ch. 575, sec. 2(16)].
(17) [(f)] "Supplemental award" is defined in KRS 164.7874(19) [1996 Ky. Acts ch. 575, sec. 2(17)].

WAYNE STRATTON, Chairman
RICHARD F. CASEY, General Counsel
APPROVED BY AGENCY: September 13, 2000
FILED WITH LRC: September 13, 2000 at 3 p.m.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRIS, November 14, 2000)

11 KAR 16:020. Student eligibility report.

RELATES TO: KRS 164.7885(4) [1998 Ky. Acts ch. 575, sec. 6(4)]
STATUTORY AUTHORITY: KRS 164.784(4), 164.7885(7) [1998 Ky. Acts ch. 575; sec. 6(7)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honors scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) [1998 Ky. Acts ch. 575] requires the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence [Commonwealth-Merit] Scholarship Program. This administrative regulation establishes the procedures for a participating institution to report renewal eligibility of a student for a Kentucky Educational Excellence [Commonwealth-Merit] Scholarship.

Section 1. Initial Eligibility Verification. (1) The participating institution shall submit to the authority, an eligibility verification file after the beginning of the academic term.
(a) For each eligible student, the eligibility verification file shall contain:
1. The student's name and Social Security number;
2. The full-time or part-time enrollment status, measured in credit hours or credit hour equivalent; and
3. The student's highest ACT score attained by the date of graduation from high school unless the authority receives the ACT score directly from the testing services.
(b) The KEES program officer shall certify the eligibility of the eligible postsecondary student and transmit the file electronically to the authority according to instructions provided by the authority in accordance with subsection (2) of this section. The eligibility verification file shall contain the name, Social Security number, and the full-time or part-time enrollment status, measured in credit hours or credit-hour equivalent, at the beginning of each academic term for all eligible students. The eligibility verification file shall additionally contain the student's highest ACT score attained by the date of graduation from high school unless the authority receives the ACT score directly from the testing services. The KEES program officer shall certify the eligibility of the eligible postsecondary student and transmit the file electronically to the authority according to instructions provided by the authority.

(2) The instructions provided by the authority shall specify:
(a) Conditions under which KEES funds shall be disbursed to the benefit of the eligible postsecondary student pursuant to 11 KAR 15:050 and
(b) Conditions under which KEES funds shall be returned to the authority pursuant to 11 KAR 15:060.

(3) A participating institution that does not submit an eligibility verification file according to the instructions shall not receive KEES funds until it has satisfied the requirements in subsection (1) of this section.

(b) The authority may withhold any services and funds from the participating institution until the file and all funds advanced, that remain undisbursed to eligible postsecondary students, are received by the authority.

Section 2. Renewal Eligibility Verification. (1) The participating institution shall electronically submit to the authority a renewal eligibility file no later than June 30 after the completion of the award period. The renewal eligibility file shall contain the name, Social Security number, and the cumulative grade point average for all eligible students.

(2) A participating institution that does not submit a renewal eligibility file by June 30 shall not receive KEES [Commonwealth-Merit Scholarship] funds until it has satisfied the requirement in subsection (1) of this section. The authority may withhold any service and funds from the participating institution and initiate action to terminate, suspend or limit participation of the institution pursuant to 11 KAR 4:020 until the file is received by the authority.

WAYNE STRATTON, Chairman
RICHARD F. CASEY, General Counsel
APPROVED BY AGENCY: September 13, 2000
FILED WITH LRC: September 13, 2000 at 3 p.m.

KENTUCKY RETIREMENT SYSTEMS
(As Amended at ARRS, November 14, 2000)

105 KAR 1:150. Installment purchase procedures.

RELATES TO: KRS 16.645(20), 61.552(16), 78.545(35), 26 USC 415

STATUTORY AUTHORITY: KRS 61.645(9)(e) [NECESSITY, FUNCTION AND CONFORMITY: KRS 61.552(16)]
[The statute] provides that an employee participating in the Kentucky Retirement Systems may purchase service credit by payroll deducted installments. This administrative regulation sets out the process and forms related to this option.

Section 1. Installment payment plans shall be allowed for the employees of an agency that has certified its agreement [willingness] to deduct and remit installment payments on all employees participating in the Kentucky Retirement Systems. The certification shall be made on the "Form 7280, Employer Certification Form, Form," [H43; dated June 1991], provided by the retirement system.

Section 2. (1) The retirement system shall calculate the monthly payment necessary to pay the cost of the service being purchased.

(2) The employee may select a payment period of not less than one (1) year and not more than five (5) years in accordance with the statutory requirement. [The monthly payment options offered to the employee shall not exceed the limitations for annual additional contributions in 26 USC 415.]

(3) The retirement system shall provide [an HPS-Option-Selection Form, Form 114; dated June 1991] to the employee a "Form 5770," [showing his payment options and providing a space for selecting the option of his choice. The employee shall return the completed form to the retirement system by its due date. If the employee returns the form after the due date, the cost shall be recalculated for a date not less than thirty (30) days following and returned to the employee.

Section 3. Upon receipt of the completed form, the retirement system shall print an installment Service Purchase Agreement [Form 114; dated February 1994, and return the form to the employee].

(4) The agreement shall contain a space for selecting the payment option and an authorization for withholding the installment payments.

(5) The agreement shall also provide a space for the employee to indicate the amount of any down payment to be made by the employee, whether by personal check or transfer of funds from a qualified retirement plan or deferred compensation arrangement.

Section 3. (1) Upon receipt of the completed Installment Service Purchase Agreement, the retirement system shall notify the employee and employer of [end-shall-show] the amount of the installment payment, the date the payments shall begin, the date the payments shall end, and the total payments [and the total service purchased].

(2) If the employee is making a down payment by transfer or rollover from a qualified retirement plan or deferred compensation a-
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rangement, the retirement system shall notify the employee and employer of the amount of the installment payments following receipt of the transferred or rolled over funds.

(3) An amortization schedule shall be sent to the employee (attached). The employee shall sign and return the agreement by its due date. The retirement system shall provide to [notify] the employer [of the date to begin deductions by providing] a copy of the completed agreement.

(4) The Installment Service Purchase Agreement shall be voided and a new calculation of the cost of the purchase shall be required if:

(a) The Installment Service Purchase Agreement is not filed at the retirement office by the deadline for purchase of the service credit.

(b) The Installment Service Purchase Agreement is not filed at least sixty (60) days prior to the employee's last day of paid employment.

(c) The employee fails to complete the Installment Service Purchase Agreement; or

(d) The employee indicates that a down payment is to be made, but the employee does not include the check or proof of eligibility to rollover or transfer funds from a qualified retirement plan or deferred compensation arrangement with the Installment Service Purchase Agreement by the deadline for purchase of the service credit.

(e) If the Installment Service Purchase Agreement is voided, any down payment shall be refunded to the member or, in the case of rollover or transfer, returned to the qualified retirement plan or deferred compensation arrangement.

Section 4. (1) The employer shall remit the installments to the retirement system as required by the agreement, but shall be solely responsible for withholding sufficient amounts from the employee to allow the payment of the installments.

(2) The installments shall only be remitted to the retirement systems along with the employer's contribution report. If the employee is not employed twelve (12) months each year, the agency shall withhold sufficient funds to allow the agency to remit the required deductions with the contribution reports during any months in which the employee is not paid.

(3) The retirement system shall not accept personal checks from the employee as payment for these deductions.

Section 5. (1) The amount required to purchase one (1) month of service credit shall be calculated by dividing the total of the installment payments due under the agreement by the number of months of service credit being purchased.

(2) Upon receipt of installment payments equal to this amount, the retirement system shall credit one (1) month of service credit to the member's account.

Section 6. (1) The employee shall notify the retirement system in writing if he desires to terminate the installment agreement.

(2) Upon receipt of the notice from the employee, the retirement system shall notify the employee and his employer of the date to stop deductions.

Section 7. The total amounts received from the employee, including monthly payments and lump sum down payments or remaining balance payments shall be subject to the limitations for annual additional contributions in 26 USC 415. Amounts received in excess of these limitations shall be refunded to the employee, or his beneficiary; and the service credit associated with the amounts in excess of the limitations shall not be added to the employee's service credit.

Section 8. Incorporation by Reference. (1) [9] The following forms [required by this administrative regulation] are incorporated by reference:

(a) "Form 7280, Employer Certification Form (Rev. 7/00)", Kentucky Retirement Systems;

(b) "Form 5710, Installment Service Purchase Agreement (Rev. 7/00)", Kentucky Retirement Systems.

(2) This material [These materials] [and] may be inspected, copied, or obtained, subject to applicable copyright law, at [from] the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, [between the hours of 8 a.m. and 4:30 p.m.] Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair
APPROVED BY AGENCY: August 17, 2000
FILED WITH LRC: September 13, 2000 at 4 p.m.

KENTUCKY RETIREMENT SYSTEMS
(As Amended at ARRS, November 14, 2000)

105 KAR 1:180. Death before retirement procedures.

RELATES TO: KRS 16.578. 16.601. 61.640. 78.545 [16.565 to 16.652; 61.510 to 61.705; 76.510 to 76.852]

STATUTORY AUTHORITY: KRS 61.645(9)(e) [99]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.578, 16.601 and 61.640 provide for the payment of certain benefits upon the death of a member prior to retirement. This administrative regulation sets out the procedures for issuance of benefits where death occurs prior to retirement.

Section 1. After learning of the death of a member prior to retirement, the retirement system shall contact the named beneficiary or estate of the deceased member. The retirement system shall require a Form 6810, Certification of Beneficiary, [Form 7—dated July 1994—] from the beneficiary named by the member.

Section 2. The following information shall be required before benefits shall be paid:

(1) A copy of the death certificate for the member.

(2) If a beneficiary is deceased, a copy of the death certificate for the beneficiary.

(3)(a) If a beneficiary or dependent child is a minor [or child], a copy of the minor's birth verification, and a Form 6110, [or child's birth certificate and an] Affidavit of Authorization to Receive Funds on Behalf of Minor, [Form 37—dated August 1994—] from the parent or guardian.

(b) If dependent children are eligible for payments, a Form 6456, Designation of Dependent Child, for each dependent and verification of full-time student status of any dependent child (for parent or guardian child provide the names: Social Security numbers and birth certificates of all dependent children. If a dependent child is age eighteen (18) or over, the parent or guardian shall provide the system with a statement of the child's marital status, the name of the school in which the dependent child is enrolled as a full-time student and a copy of the dependent child's class schedule).

(c) The parent or guardian shall notify the system of the death or marriage of a dependent child or if the dependent child ceases to be a full-time student. Upon request, the parent or guardian shall provide verification of the child's status as a full-time student [a copy of the dependent child's current class schedule].

(4) If a beneficiary or dependent child is a minor child of divorced parents, a copy of the court appointment of permanent guardianship, conservator or trustee.

(5) If a beneficiary is divorced from the member, a copy of the divorce decree.

(6) If monthly benefits are available to the beneficiary, copies of the birth certificates of the member and the beneficiary.

(7) If an estate is beneficiary, verification of the name of the individual authorized to manage the financial affairs of the deceased.

Section 3. If the death certificate shows the cause of death to be homicide or the subject of a pending investigation, the retirement office may require additional evidence relating to the cause of death or investigations and arrests by law enforcement agencies and may delay benefits until it deems the cause of death to be fully explained.

Section 4. (1) Upon receipt of the death certificate, the retirement office shall provide to the beneficiary the monthly payment options

(2) If the member died in the same month as his effective retirement but prior to the drawing of the first check, the beneficiary shall also be offered the benefits payable to a beneficiary under the option the member selected. If a refund of the account is to be made, the beneficiary shall complete a Form 6625 [(b), "Refund of Deceased Member's Account;", dated July 1962].

Section 5. No payment shall be made until all information, documents and forms required by the retirement system are received.

Section 6. Incorporation by Reference. (1) The following material is [materials] [forms] [required by this administrative regulation] are incorporated by reference:
   (a) "Form 6810, Certification of Beneficiary (Rev. 7/00)". Kentucky Retirement Systems;
   (b) "Form 6010, Estimated Retirement Allowance (Rev. 7/00)". Kentucky Retirement Systems;
   (c) "Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor (Rev. 7/00)". Kentucky Retirement Systems;
   (d) "Form 6456, Designation of Dependent Child (Rev. 7/00)". Kentucky Retirement Systems;
   (e) "Form 6825, Refund of Deceased Member's Account (Rev. 7/00)". Kentucky Retirement Systems.

(2) This material [These materials] [and] may be inspected, copied, or obtained, subject to applicable copyright law, at the [from] Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, Monday through Friday, [between] 8 a.m. to [end] 4:30 p.m.

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KENTUCKY RETIREMENT SYSTEMS
(As Amended at ARRS, November 14, 2000)

105 KAR 1:200. Retirement procedures and forms.

RELATES TO: KRS 16.576, 16.577, 16.645[(18)], 61.590, 61.595, 61.702, 61.705, 78.545 [76.454]

STATUTORY AUTHORITY: KRS 61.590(1), 61.645(9)(e) [(f)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.590(1) requires that a member or beneficiary eligible to receive retirement benefits have on file at the retirement office each form required by the board. KRS 61.645(9)(e) [(f)] requires the board to promulgate necessary administrative regulations. This administrative regulation sets out the procedures and forms for application for and receipt of retirement benefits by members of the Kentucky Retirement Systems.

Section 1. (1) The member shall submit a Notification of Retirement, Form 6000, to the retirement systems no earlier than six (6) months prior to his desired effective retirement date.

(2) The member shall designate the beneficiary of his retirement allowance on the form.

(3) The form shall be dated and the employee's signature shall be witnessed.

Section 2. (1) The retirement system shall estimate the member's retirement allowance based on the salary reported to the system and information that may be supplied by the member or his employer.

(2) The payment options and amounts available to the member shall be printed on the Estimated Retirement Allowance, Form 6010, and provided to the member with a place to designate his choice of payment options.

Section 3. (1) The member shall designate a desired payment option and sign and date the form Estimated Retirement Allowance, Form 6010. The member's signature shall be witnessed and the form returned to the retirement office.

(2) The retirement office shall process the first payment in the month following the month in which the form is filed at the retirement office assuming the member's employment has been terminated.

(3) If the member is retiring under early retirement provisions, the member shall return the form within six (6) months of his retirement date to retain the effective date of retirement shown on the form.

(4) If the member fails to return the form within six (6) months of his retirement date, the member's retirement notification shall be considered void and he shall be required to submit a new notification of retirement.

Section 4. (1) The member shall provide the retirement system a copy of his birth certificate or hospital record and, if a survivorship payment option is selected, a copy of the birth certificate or hospital record of the beneficiary named on his notification of retirement.

(2) If a birth certificate or hospital record is not available, the retirement system may accept other proof of age accompanied by a letter from the office responsible for birth records in the state of the individual's birth stating that a birth certificate is not available.

(3) The retirement system may accept one (1) or more of the following as proof of age of the member or his beneficiary:
   (a) Age record of the Social Security Administration;
   (b) Immigration and naturalization service records;
   (c) Baptismal record;
   (d) Marriage license;
   (e) School record;
   (f) Birth certificate of child; or
   (g) Military discharge.

Section 5. (1) A recipient shall complete [have the option of having his retirement allowance electronically transmitted to his account or, through written notice to the Retirement Board, receive his retirement allowance in the mail:]

(2) When an individual becomes eligible to receive a monthly retirement allowance, the retirement system shall provide an Authorization for Deposit of Retirement Payment, Form 6130, [to the recipient] to have the monthly retirement allowance deposited to an account in a financial institution.

(2) [65] The recipient and [the financial institution shall provide the information and authorizations required for the electronic transfer of funds from the state treasurer's office to the designated financial institution.]

(3) [4] At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new Authorization for Deposit of Retirement Payment and filing the form at the retirement office in Frankfort.

(4) The recipient may complete a Form 6135, Request for Payment by Check.

(5) The retirement office shall not release the retirement allowance until the recipient has filed a completed Authorization for Deposit or filed a completed Request for Payment by Check on which the recipient has shown proof of hardship as determined by the retirement system.

(b) Any delay in release of the retirement allowance under this subsection shall not alter the effective date of medical insurance coverage.

Section 6. (1) The retirement office shall provide a Certification of Service, Form 6120, to the member to certify service with another agency participating in the Kentucky Retirement Systems for which he may be eligible to purchase credit prior to retirement.

(2) The retirement office shall, upon request, provide the member with the cost of purchasing the service and an estimate of the benefits attributable to the additional service credit.

Section 7. (1) The retirement office shall provide forms for the selection or waiver of medical insurance coverage for the member, his spouse and dependents under the group insurance plan at the time of retirement.

(b) The forms shall be the Kentucky Retirement Systems High and Low Option Coverage, Form 6200, and the Waiver of Insurance
KENTUCKY RETIREMENT SYSTEMS
(As Amended at ARRS, November 14, 2000)


RELATES TO: KRS 165.050 to 16,652, 61,510 to 61,705, 78,510
in 78 RS 92, 944.000, 29 CFR Part 1600, 42 USC 12111[9]
STATUTORY AUTHORITY: KRS 61.845/9(a)[(f)
NECESSITY, FUNCTION, AND CONFORMITY: The statutes
provide for disability benefits to members of the retirement systems
and for a process of appealing a denial of disability benefits. This ad-
ministrative regulation describes those procedures.

Section 1. (1) Application for disability benefits shall be made on
the "Form 6000, Notification of Retirement" [Form 6; dated January
1991].

(2) The application shall be received in the retirement office
within twenty-four (24) [twelve (12)] months of the employee’s last
day of paid employment in a regular full-time position, which shall consist
of 730 [365] calendar days of the employee’s last day of paid employ-
ment in a regular full-time position.

(3) The period shall begin on the day after the last day of paid
employment in the regular full-time position and shall end at close of
business on the 730th [365th] day following.

(c) If the last day of the period is a Saturday, Sunday or holiday,
then the application shall be valid if received in the retirement office by
the close of the next business day following the weekend or holiday.

(d) The employer shall certify the last day of paid employment.

(e) The application may be submitted prior to the member’s last
day of paid employment.

Section 2. (1) If the member is eligible to begin drawing early re-
irement benefits, the member shall be notified of his right to a retire-
ment allowance while his disability application is being processed.

(2) Election of early retirement by the member shall not affect his
application for disability retirement.

Section 3. (1) A Form 8030, [An] Employee's Job Description,
dated August 1994, shall be completed by the member and sub-
tered to the retirement office. The employer shall complete a Form 8030,
[an] Employer’s Job Description, dated August 1994, and submit it to
the retirement office. The descriptions shall be on the form provided
by the retirement office.

(2) The retirement office may require additional details from the
member and the employer on the member’s job duties.

Section 4. (1) The retirement office shall request the medical rec-
cords of the member from the physicians or medical facilities named on
the application.

(2) The member's physicians or medical facilities shall submit
copies of all medical records, test results or other information applicable
to the member to the retirement office.

(3) The member or his physician may submit a current listing of
the member’s prescription medications.

(4) Statements by the physicians shall not be considered medical
evidence unless accompanied by documented medical records or test
results.

(5) The retirement office shall pay a reasonable fee for the copies.

(6) Amounts for copies above that paid by the retirement office
for the copies shall be the responsibility of the member.

Section 5. The member shall provide to the retirement system
information concerning his status with regard to Workers’ Compensa-
tion and Social Security disability benefits.

Section 6. When both of the job descriptions and all medical
information from all, but at least two (2), physicians or medical facilities
that have treated or examined the member have been received, the
information shall be submitted to the medical examiner.

Section 7. (1) The medical examiner shall base his determination
on the medical evidence contained in the member’s retirement file and
the member’s residual functional capacity and exertional require-
ments.

(2) The medical examiner may contact the member or the member’s physicians to request additional medical evidence.

Section 8. (1) The time limits in KRS 61.665 for the member’s actions in response to a denial, reduction or discontinuance of benefits shall be counted beginning on the day following receipt of notice by the member from the retirement office.

(2) The time limits [and] shall continue until the close of business on the date the member files the necessary action with the retirement office or the date the time period ends.

(3) The period shall continue [and] until the member is in receipt of written notice from the retirement office of further denial.

(4) The period to request a formal hearing shall not exceed the cumulative extension of time specified in KRS 61.665(2)(g).

(5) When the periods allowed under the statute have been exhausted, the member shall have no further right to appeal to the hearing officer.

Section 9. (1) The member shall make a request for a formal hearing in writing.

(2) If the member is unable to attend or desires to reschedule a formal hearing:

(a) [ ] The member shall send the retirement office a request in writing prior to the date of the hearing; and

(b) The hearing officer may reschedule the hearing upon a finding of good cause.

Section 10. (1) The hearing officer may allow the member to introduce, among other evidence, the determination of Workers’ Compensation or Social Security Administration awarding disability benefits to the member.

(2) The hearing officer shall only consider competent medical evidence within or attached to the determination and shall not consider any vocational factors.

Section 11. (1) The hearing officer may request a prehearing conference or may consider new medical evidence not already part of the member’s retirement file.

(b) The prehearing conference is an informal procedure, presided over by the hearing officer.

(c) Every effort shall be made by all parties to dispose of controversies, to narrow and define issues and to facilitate prompt settlement of the claim.

(2) If at the conclusion of the prehearing conference the parties have not reached an agreement on all the issues, the hearing officer shall schedule a hearing to be held within sixty (60) days after the date of the prehearing conference [a reasonable time].

(3) If the parties agree upon a settlement after the prehearing conference but before the hearing, the settlement agreement shall be filed with the hearing officer.

(b) The hearing shall be cancelled and notice of the cancellation shall be served on all parties.

Section 12. (1) If the member’s application for disability is approved, the member’s disability benefit shall be paid retroactive to the month following the month of the member’s last day of paid employment.

(2) If the member did not receive early retirement benefits, upon the member’s selection of a payment option, the retirement office shall pay the member the total monthly retirement allowances owed.

(3) If the member received early retirement benefits, the retirement office shall calculate and pay to the member the difference between the early retirement benefit which was paid to the member and the disability benefit.

(b) The member shall not change his payment option.

(4) If benefits are payable to dependent children, as defined in KRS 16.505(17), the following is required:

(a) The parent or guardian shall provide a Form 6456, Designation of Dependent Child, verification of full-time student status of any child age eighteen (18) or over, the names; Social Security numbers; and copies of the birth certificates of each dependent child.

(b) If a dependent child is a minor, a Form 6110, [an] Affidavit of Authorization to Receive Funds [Benefits] on Behalf of Minor, [Form 37, dated August 1994:] shall be completed.

(c) If a dependent child is a minor child of divorced parents, a copy of the court appointment of permanent guardianship, conservator or trustee shall be provided; age eighteen (18) or over, the parent or guardian shall provide the system with a statement of the child’s marital status, the name of the school in which the dependent is enrolled as a full-time student and a copy of the dependent’s class schedule.

(d) The parent or guardian shall notify the system of the death or marriage of a dependent child if the dependent child ceases to be a full-time student.

2. Upon request, the parent or guardian shall provide a copy of the dependent child’s verification of full-time student status [current class schedule].

(5) Any increases provided to recipients under KRS 61.691 shall be applied to the member’s disability benefit and payments to dependent children in determining the total retroactive payments owed to the member and dependent children.

Section 13. When a member whose application for disability benefits has been previously denied subsequently submits a disability application accompanied by medical evidence pursuant to KRS 16.682(2)(e) or 61.600(1)(e), a medical examiner shall review the application as provided in Section 7 of this administrative regulation. [determine from the evidence if a substantial change has occurred in the member’s condition. If the medical examiner determines that a substantial change has occurred, the application shall be processed under the provisions of KRS 61.665. If the medical examiner determines a substantial change has not occurred, the application shall not be accepted. The member shall have no further administrative proceedings, but may appeal to Franklin Circuit Court.]

Section 14. Incorporation by Reference. (1) The following materials [forms required by this administrative regulation] are incorporated by reference;

(a) "Form 6000, Notification of Retirement (Rev. 7/00)", Kentucky Retirement Systems;

(b) "Form 8030, Employee’s Job Description (Rev. 7/00)", Kentucky Retirement Systems;

(c) "Form 8035, Employee’s Job Description (Rev. 7/00)", Kentucky Retirement Systems;

(d) "Form 8110, Affidavit of Authorization to Receive Funds [Benefits] on Behalf of Minor (Rev. 7/00)", Kentucky Retirement Systems;

(e) "Form 6456, Designation of Dependent Child (Rev. 7/00)", Kentucky Retirement Systems.

(2) This material [These materials] [and] may be inspected, copied, or obtained, subject to applicable copyright law, at [from] the Kentucky Retirement Systems, Parkway West, 1280 Louisville Road, Frankfort, Kentucky 40621-9124, [between the hours of 5:00 a.m. and 4:30 p.m.] Monday through Friday, 9 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair
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KENTUCKY RETIREMENT SYSTEMS
(As Amended at ARRS, November 14, 2000)

105 KAR 1:220. Annual disability review.

RELATES TO: KRS 16.596, 61.610, 78.545.

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.596 and 61.610 [The statutes] provide for an annual medical or financial review of certain members of the Kentucky Retirement Systems who retired under disability. This administrative regulation sets out the process for those annual reviews.

Section 1. (1) The board shall review the medical status of hazardous members who are receiving disability benefits, other than total
and permanent, on a one (1) to five (5) year schedule as determined by the medical examiner [each year] on the anniversary of the member's initial approval by the board until the member reaches age fifty-two (52) prior to the board meeting.

(2) The member shall submit the names of the physicians or medical facilities that treated the member within the preceding twelve (12) months.

(3) The retirement office shall request the member's medical records from the physicians and medical facilities and shall submit the records received to the board's medical examiners.

(4)(a) The board shall take action to continue, discontinue or reduce the member's disability benefit based on the recommendation of the medical examiners.

(b) The retirement office shall notify the member of the board's action within ten (10) business days of the meeting at which the member's status was reviewed.

(5)(a) The member shall notify the retirement office immediately upon employment in any capacity.

(b) The medical examiners shall review the duties of the position in which the disabled member is employed and recommend to the board if the employment constitutes a change in the member's disability status.

Section 2. (1) Annually, the board shall review the status of each nonhazardous disability retiree and each hazardous retiree receiving total and permanent disability benefits whose effective retirement date is July 1, 1988 or earlier [and who has drawn disability retirement benefits for at least twenty-four (24) months].

(2) The board shall cease the review of the disability status of a member when:

(a) The nonhazardous member reaches age sixty-two (62) before July 1 of that year; or

(b) The hazardous member reaches age fifty-two (52) before July 1 of that year. [If the nonhazardous member reaches age sixty-two (62) prior to July 1 of the current calendar year or if the hazardous member reaches age fifty-two (52) prior to July 1 of the current calendar year, the board shall not review the status of the member.]

(3) The member shall complete a "Form 8100, Annual Disability Certification" form dated July 1991 supplied by the retirement office which shall request information concerning the member's income and status with regard to benefits from the federal Social Security Administration or Black Lung program.

(4) The board may not require further review of a member who is receiving Social Security disability and who has no other income.

(5) The board shall review the financial status of members who had income of $100 or more during the previous twelve (12) months.

(6) If the member is not receiving Kentucky Teachers' Retirement System or Social Security disability, the board shall require the member to undergo a medical review, pursuant to Section 1(2), (3) and (4) of this administrative regulation, every four (4) years following the initial review.

(7) The retirement office shall notify the member if the board changes the member's disability status within ten (10) business days of the meeting at which the member's status was reviewed.

Section 3. (1) Annually, the board shall review the status of each nonhazardous disability retiree and each hazardous retiree receiving total and permanent disability benefits whose effective retirement date is August 1, 1988 or later and who has drawn disability benefits for at least twelve (12) months.

(2) The board shall cease the review of the disability status of a member when:

(a) The nonhazardous member reaches age sixty-two (62); or

(b) The hazardous member reaches age fifty-two (52). [The board shall not review the status of a nonhazardous member beginning in the year he reaches age sixty-two (62); the board shall not review the status of a hazardous member beginning in the year he reaches age fifty-two (52).]

(3) The member shall complete a "Form 8100, Annual Disability Certification" form dated July 1991 supplied by the retirement office which shall request information concerning the member's income and status with regard to benefits from the Social Security Administration and Black Lung program.

(4) No change shall be made in benefits to a member who is receiving Social Security disability and who has no other income.

(5) The board shall review the status of a member who had income of $100 or more during the previous twelve (12) months.

(6) If the member is not receiving Social Security disability, the board shall require the member to undergo a medical review pursuant to Section 1(2), (3) and (4) of this administrative regulation on a one (1) to three (3) year schedule as determined by the medical examiner [each year] following the initial review.

(7) If the board changes the member's disability status, the retirement office shall notify the member within ten (10) business days of the meeting at which the member's status is reviewed.

Section 4. The board may request financial information from other state or federal agencies to determine if a member is receiving income or a Social Security disability benefit.

Section 5. The board may not require a medical review if the member's medical status is reviewed by the Kentucky Teachers' Retirement System.

Section 6. The retirement office shall pay a reasonable fee for copies of medical records requested from the member's physicians or medical facilities.

Section 7. Incorporation by Reference. (1) "Form 8100, Annual Disability Certification (Rev. 7/00)" is the forms required by the administrative regulation and are incorporated by reference.

(2) This material [and] may be inspected, copied or obtained, subject to applicable copyright law, at [from] the Kentucky Retirement Systems, [retirement office located at] Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124, [between the hours of 8 a.m. and 4:30 p.m.] Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair
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KENTUCKY RETIREMENT SYSTEMS
(As Amended at ARRS, November 14, 2000)

105 KAR 1:260. Purchase of out-of-state service credit.

RELATES TO: KRS 61.552(17), (18), 26 USC 415
STATUTORY AUTHORITY: KRS 61.645(9)(e) (ff)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.552(17) and (18) provide [The statute provides] for the purchase of out-of-state service credit for members of the Kentucky Retirement Systems. This administrative regulation sets out the requirements and forms for obtaining credit for this service.

Section 1. Each employee wishing to purchase service credit for out-of-state public service under KRS 61.552(17) and (18) shall request a copy of Form 4140 [#1, Certification of Out-of-State Service; dated May–1994].

Section 2. (1) The employee shall mail the form to his former employer and retirement plan for completion.

(2) If the employee wishes to purchase hazardous service in CERS, he shall also obtain a copy of the description of his duties in the out-of-state position from his former employer.

(3) The employee shall be responsible for obtaining the information requested on the form regarding the period of out-of-state service.

Section 3. (1) The completed form and job description shall be submitted to the retirement office.

(2) The retirement system shall determine how much service is eligible for purchase under the statute.

Section 4. Service credit shall be eligible for purchase as hazard-
ous duty if the position is the same as or substantially similar to positions for which hazardous duty credit has been approved under KRS 61.592.

Section 5. (1) The retirement system shall notify the employee of the cost of the service which qualifies for purchase.

(2) The cost shall be determined as a delayed contribution payment except that the employee shall pay 100 percent of the total.

(3) The cost shall be based on the employee's age rounded to the nearest year and the employee's estimated current rate of pay, final rate of pay or final compensation, whichever is higher.

(4) Payment by the employee shall be due on the date shown on the notification unless the employee participates in an installment purchase plan as provided under KRS 61.552(16) and 105 KAR 1:150. [No payment shall be allowed if the cost exceeds the limitations on annual additional contributions in 26 USC 415(1).]

Section 6. If the employee's actual rate of pay or final compensation is higher than estimated and results in a difference of $100 or more in the cost of the service, the employee shall be notified and shall pay the additional cost for the service within thirty (30) days of the date on the notification.

Section 7. (1) If the retirement system determines that the service is not eligible for purchase, the retirement system shall notify the employee of the reasons.

(2) If additional information is needed to make the determination, the employee shall be responsible for obtaining the additional information.

Section 8. Incorporation by Reference. (1) "Form SI40, Certification of Out-of-state Service (Rev. 7/00)" [The form] required by the administrative regulation is incorporated by reference,

(2) This material [and] may be inspected, copied or obtained, subject to applicable copyright law, at [from] the Kentucky Retirement Systems, Perimeter Park West, 1280 Louisville Road, Frankfort, Kentucky 40601-8124, [6 a.m. to 4:30 p.m.] Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair
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FINANCE AND ADMINISTRATION CABINET
KENTUCKY RETIREMENT SYSTEMS
(As Amended at ARRS, November 14, 2000)

105 KAR 1:290. Medical insurance reimbursement plan.

RELATES TO: KRS 61.702, 26 USC 105(b), 213(d)
STATUTORY AUTHORITY: KRS 61.645(9)(e), 61.702
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.702[-as amended by the 2009 General Assembly]- requires the Board of Trustees of the Kentucky Retirement Systems to promulgate an administrative regulation to establish a medical insurance reimbursement plan to reimburse eligible recipients living outside of Kentucky. This administrative regulation sets the eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement and forms.

Section 1. The medical insurance reimbursement plan shall be available to a recipient who is:

(1) Residing in another state; and
(2) [who is] A retired member of the,
(a) Kentucky Employees Retirement System;
(b) [the] County Employees Retirement System;
(c) [or] State Police Retirement System; or
(d) [who is] The beneficiary of a retired member of the:
1. State Police Retirement System;
2. [or of] Kentucky Employees Retirement System; or
3. County Employees Retirement System hazardous member,

(2) The reimbursement plan shall be available in any month the recipient is not eligible for:

(a) Coverage under the contract for medical insurance for Medicare-eligible individuals maintained by the Board of Trustees;
(b) In-network benefits through a health maintenance organization or preferred provider organization offered through the state group medical insurance administered by the Commonwealth of Kentucky; or
(c) Coverage under an indemnity plan offered to and providing the same payments for medical services to retired members residing in Kentucky.

Section 2. (1) The maximum monthly reimbursement rates for the following coverages shall be set by the board in accordance with KRS 61.702:

(a) Coverage for one (1) individual;
(b) Coverage for the recipient and one (1) or more dependents;
(c) Coverage for the recipient and spouse; or
(d) Coverage for the recipient, spouse and dependents.

(2) The monthly reimbursement rate shall be reduced by the amount contributed by any employer toward the recipient's medical insurance premium.

Section 3. The retirement system shall notify recipients of their eligibility to participate in the medical insurance reimbursement plan;

(1) Prior to the initial payment of the retirement allowance;

(2) When notified of a change of residence to another state in an area not covered by the state group medical insurance administered by the Commonwealth of Kentucky; and

(3) Each open enrollment period for medical insurance coverage effective the following calendar year.

Section 4. An eligible recipient shall submit to the retirement office an Application for Medical Insurance Reimbursement, Form 6240, along with one (1) or more of the following as proof of payment for hospital and medical insurance premiums:

(1) A copy of the invoice from the insurance company and copy of the receipt for payment; and
(2) A copy of the invoice from the insurance company and copy of the front and back of the cancelled check made out to the insurance company;

(3) A copy of a pay stub if the pay stub clearly shows a deduction for hospital and medical insurance;

(4) A statement from the eligible recipient's employer listing dates and amounts of premiums deducted from wages;

(5) A copy of a bank statement showing deductions for hospital and medical insurance if the statement clearly indicates payment to a company that provides only hospital and medical insurance;

(6) A copy of a bank statement showing deductions to an insurance company along with a statement from the insurance company listing dates and amounts of premiums; or

(7) Other documentation which the retirement system determines is sufficient to prove payment for hospital or medical insurance.

Section 5. (1) Medical insurance premiums which are eligible for reimbursement shall be the premiums for hospital and medical coverage which are paid for by the eligible recipient:

(a) For calendar year 2000, premiums paid on or after July 14, 2000.
(b) For calendar years 2001 and later, those premiums paid for hospital and medical insurance coverage in the calendar year.

(2) The retirement office shall reimburse eligible recipients once each calendar year quarter. Eligible recipients shall submit proof of payment for hospital and medical insurance by the following dates for payment in the following month:

(a) By March 20, for reimbursement in April;
(b) By June 20, for reimbursement in July;
(c) By September 20, for reimbursement in October; or
(d) By December 20, for reimbursement in January.

(3) The retirement system shall not reimburse eligible recipients for any premiums paid in a calendar year if the Application for Medical
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Insurance Reimbursement and proof of payment for hospital and medical insurance premiums is received in the retirement office after March 20 of the following year.

Section 6. The retirement system may verify the recipient's eligibility for reimbursement for hospital and medical insurance by requesting verification of coverage and payments directly from the insurance company indicated on the Application for Medical Insurance Reimbursement.

Section 7. (1) If a recipient receives reimbursement for any payment which the recipient was not eligible to receive, the recipient shall return the payment to the retirement system.

(2) If the recipient fails to return the payment within thirty (30) days of notification by the retirement office, the retirement office shall deduct the amount from the recipient's future payments from the retirement system.

Section 8. Incorporation by Reference. (1) The Application for Medical Insurance Reimbursement, Form 6240, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, Perimeter Park West, 1200 Louisville Road, Frankfort, Kentucky 40601-6124, Monday through Friday, 8 a.m. to 4:30 p.m.

RANDY OVERSTREET, Chair
APPROVED BY AGENCY: August 17, 2000
FILED WITH LRC: September 13, 2000 at 4 p.m.

KENTUCKY BOARD OF NURSING
(As Amended at ARRS, November 14, 2000)

201 KAR 20:215. Contact hours, recordkeeping and reporting requirements for renewal of licensure.

RELATES TO: KRS 314.011(12), 314.073, 314.991(1) to (3)
STATUTORY AUTHORITY: KRS 314.073, 314.131(1), (2), 314.991(1) to (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 provide that the board shall establish continuing competency [education] requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency [education] for nurses.

Section 1. Definition. (1) "Earning period" means November 1 through October 31 of a current licensure period.

(2) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.

Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate their continued competency in nursing for each earning period.

(2) A licensee shall maintain the documentation of the method chosen.

(3) A licensee shall provide the documentation when directed by the board.

Section 3. Methods for continued competency validation are as follows:

(1) Thirty (30) [60] contact hours of continuing education earned during the licensure period which shall include the continuing education required by Section 5 of this administrative regulation.

(2) Current national certification or recertification in effect during the licensure period related to the nurse's practice role and the continuing education required by Section 5 of this administrative regulation.

(3) Fifteen (15) contact hours of continuing education earned during the licensure period which shall include the continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the licensure period:

(a) Completion of a nursing research project as principal investigator, coinvestigator or project director,

(b) Publication of a nursing-related article in a refereed professional publication,

(c) A professional nursing presentation that is:

1. An educational presentation that is made to other health professionals;

2. At least one (1) hour in length;

3. Not a part of the licensee's primary [role] function; and

4. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter in the offering;

(d) A nursing employment evaluation that is satisfactory for continued employment; or

(e) A successfully completed employment competency validation.

Section 4. (1) A licensee shall provide documentation of the methods used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the methods used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. (1) A licensee may [shall] complete thirty (30) contact hours of continuing education activities from an approved provider during the earning period.

(2) Registered nurses and licensed practical nurses shall earn a minimum of two (2) contact hours of the thirty (30) hours-shall be earned in HIV/AIDS education [course] approved by the Cabinet for Health Services pursuant to 201 KAR 2:180.

(3)(a) Partial credit for attendance at a continuing education activity shall not be given.

(b) A licensee who attends continuing education activities, whether as a teacher, participant or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(4) A licensee shall determine whether a continuing education activity is offered by an approved provider.

(5) [For] Advanced registered nurse practitioners shall earn [c] a minimum of five (5) contact hours of the thirty (30) hours shall be in pharmacology.

(6) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 5.

Section 6. The following categories of programs shall not qualify as approved continuing education activities:

1. Course content included in prelicensure nursing programs except for licensed practical nurses enrolled in prelicensure registered nurse programs;

2. Business meetings or committee meetings of organizations;

3. In-service and orientation to specific institutional policies and practices.

Section 5. (4) (1)(a) A licensee shall maintain records to substantiate methods used to validate competency [earned contact hours].

(b) All [Records shall include a certificate furnished by the provider.]

c) [Records shall be retained for at least five (5) years following the current licensure [earning] period in which the contact hours were earned.]

(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section.

(b) Copies shall be furnished within thirty (30) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.

(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)(a) Except as provided by paragraph (b) of this subsection, if the board determines that a licensee has failed to comply with continuing competency [education] requirements, he shall be allowed to cure the noncompliance if he:

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1. Meets continuing competency [education] requirements within ninety (90) days of notification of noncompliance;
2. Enters a consent decree with the board; and
3. Pays a civil penalty imposed by the board pursuant to KRS 314.991.
(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:
1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or
2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

Section 7, [5:] [1] Successful completion of a postlicensure academic course at a college, university or postsecondary vocational institution shall qualify as a continuing education activity obtained from an approved provider if [they are]:
(a) relevant to nursing practice; and
(b) Not excepted by Section 2 of this administrative regulation.
(2) A copy of the transcript or grade report shall be submitted upon request of the board.
(b) The board may request a description of the course from the school catalog or institution syllabus:
(3) Contact hours shall be calculated as follows:
(a) One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours.
(b) One (1) quarter hour of academic credit shall equal twelve (12) contact hours.
(2) [4:] [4] The following courses shall be relevant to nursing practice:
(a) A nursing course, designated by a nursing course number, and
beyond the prelicensure curriculum of the individual licensee.
(b) An academic course that is:
1. Applicable to nursing practice; and
2. Appropriate for the nurse engaged in clinical practice, administration, education, or research; and
3. Beyond the prelicensure curriculum of the individual licensee.
(4) [5] A licensee may request course review for approval of applicable nursing content pursuant to Section 8 [5] of this administrative regulation.

Section 8, [6:] [1] A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period [earning period], he has:
(a) Requested the review by submitting an "Application for Individual Review" and
(b) Paid a fee of ten (10) dollars.
(2) The review shall be based on the standards established by:
(a) This administrative regulation; and
(b) 201 KAR 20:220.
(3) Approval by the board of a nonapproved continuing education activity shall:
(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and
(b) Be limited to the particular offering upon which the request for individual review is based.

Section 9, [7:] Incorporation by Reference. (1) "Application for Individual Review (1992)" is incorporated by reference.
(2) This document may be reviewed, inspected, or copied, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m.

JUNE BELL, President
APPROVED BY AGENCY: June 16, 2000
FILED WITH LRC: August 8, 2000 at 10 a.m.

BOARD OF PHYSICAL THERAPY
(As Amended at ARRS, November 14, 2000)

201 KAR 22:130. Per diem of board members.
RELATES TO: KRS 327.080
STATUTORY AUTHORITY: KRS 327.030(6) [327.048]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.030(6) establishes that board members shall receive a per diem not to exceed $120 per day for each day the member is actually engaged in the discharge of official duties. [Board members are required to function by a variety of tasks in fulfilling their duties.] This administrative regulation outlines the per diem members will receive when required to represent the board or attend its meetings.

Section 1. Each member of the board shall be entitled to receive a per diem of seventy-five (75) dollars for attending each meeting of the board or procuring, licensure examinations, or otherwise representing the board.

JOAN S. DALTON, Chairman
APPROVED BY AGENCY: July 13, 2000
FILED WITH LRC: September 15, 2000 at 10 a.m.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended at ARRS, November 14, 2000)

201 KAR 22:140. Funding of impaired physical therapy practitioners committee.
RELATES TO: KRS 327.040(13), 327.045, 327.070(2)(a)
STATUTORY AUTHORITY: KRS 327.045(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.045(4) requires the board to promulgate an [this] administrative regulation [establishing the] assessment fee to be collected by the board as part of the license renewal application fee of each physical therapist and certification renewal application fee of each physical therapist's assistant. This administrative regulation establishes the assessment fee. [Proceeds from this assessment shall be expended on creating, supporting, and operating an impaired physical therapy practitioners committee.]

Section 1. (1) An assessment fee of twenty (20) dollars shall be paid to the board by each licensee or credentials holder, in addition to the license and credentials renewal application fee established in 201 KAR 22:135.
(2) The assessment fee shall be paid at the time of renewal of the license or certificate [at the time of the license or certificate is renewed].

JOAN S. DALTON, Chairman
APPROVED BY AGENCY: July 13, 2000
FILED WITH LRC: September 15, 2000 at 10 a.m.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, November 14, 2000)

301 KAR 1:201. Fishing limits.
RELATES TO: KRS 150.470, 150.990(2)
STATUTORY AUTHORITY: KRS 150.025(1), 150.470
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. This administrative regulation establishes fish limit sizes, daily catch limit, and field possession limit [time limits] for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure or fly:
(a) Made of:
1. Wood;
2. Metal;
3. Plastic;
4. Feathers;
5. Preserved pork rind; or
6. A similar inert material; and
(b) Not having attached:
1. An insect;
2. Minnow;
3. Fish egg;
4. A worm;
5. Corn;
6. Cheese;
7. Cut bait; or
8. Similar organic bait substance.
(2) "Daily limit" or "creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) day or have in possession while fishing.
(3) "Daylight hours" are defined by KRS 150.010(6).
(4) "Kentucky bass" means the following with a patch of teeth on its tongue:
(a) Largemouth bass;
(b) Kentucky bass; or
(c) Coosa bass.
(5) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.
(6) "Length" means the distance from the tip of a fish's lower jaw to the tip of its tail, measured with the fish laid flat on a ruler and its tail lobes squeezed together.
(7) "Possession limit" means the maximum number of fish a person may hold in the field after two (2) or more days of fishing.
(8) "Release" means to return a fish:
(a) In the best possible physical condition;
(b) Immediately after removing the hook;
(c) To the water from which it was taken; and
(d) In a place where the fish's immediate escape shall not be prevented.
(9) "Single hook" means a hook with no more than one (1) point.
(10) "Size limit" means the minimum legal length of a fish.
(11) "Slot limit" means that a person:
(a) Shall release fish within a specified minimum and maximum size; and
(b) May keep fish above and below the protected size range.

Section 2. Statewide Size and Creel Limits. (1) Except as specified in Section 4 of this administrative regulation or by 301 KAR 1:180, a person fishing in public or private waters shall observe the following daily possession and size limits.
(a) Black bass: daily limit, six (6); possession limit, twelve (12).
1. Largemouth bass, smallmouth bass or Coosa bass: size limit, twelve (12) inches.
2. Kentucky bass: no size limit.
(b) Rock bass: daily limit, fifteen (15); possession limit, thirty (30); no size limit.
(c) Walleye and its [their] hybrids: daily limit, ten (10); possession limit, twenty (20); size limit, fifteen (15) inches.
(d) Sauger: daily limit, ten (10); possession limit, twenty (20); no size limit.
(e) Muskellunge: daily and possession limit, two (2); size limit, thirty (30) inches.
(f) Chain pickerel: daily limit, five (5); possession limit, ten (10); no size limit.
(g) White bass and yellow bass, singly or in combination: daily limit, thirty (30); possession limit, sixty (60); no size limit.
(h) Striped bass and its [their] hybrids: daily and possession limit, five (5); size limit, fifteen (15) inches.
(i) Crappie: daily limit, thirty (30); possession limit, sixty (60); no size limit.
(j) Rainbow trout and brown trout, singly or in combination: daily and possession limit, eight (8), no more than three (3) of which shall be brown trout; no size limit on rainbow trout; twelve (12) inch size limit on brown trout.
(k) Brook trout: daily and possession limit, two (2); size limit, ten (10) inches.
(2) A person shall release grass carp caught from a lake owned or managed by the department.
(3) A person shall release fish:
(a) Below the minimum size limits established by this administrative regulation;
(b) Within a protected slot limit established by this administrative regulation; or
(c) Of a particular species, if a person has in his possession the daily limit for that species established by this administrative regulation.
(4) A person shall not remove any part of the head or tail of a fish for which there is a size or creel limit until he has completed fishing for the day and has left the water.
(5) A person who wishes to possess sport fish below the size limit or beyond the possession limit shall:
(a) Obtain the fish from a licensed fish propagator or other legal source; and
(b) Retain a receipt or other written proof that the fish were legally acquired.
(6) A person shall release trout unless he:
(a) Has a valid trout permit;
(b) Is exempted from trout permit requirements by KRS 150.170(3); or
(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

Section 3. Fishing Season. The fishing season shall be open year round.

Section 4. Exceptions to Statewide Administrative Regulations. A person fishing in the waters listed in this section shall observe the following special requirements. Except as specified in this section, all other provisions of this administrative regulation shall apply to these bodies of water.
(1) Bad Branch, Letcher County. A person shall not fish except with an artificial bait with a single hook.
(2) Bark Camp Creek in Whitley County. From October 1 through March 31 a person shall:
(a) Not fish except with an artificial bait; and
(b) Release trout.
(3) Barkley Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) Crappie: size limit, ten (10) inches.
(c) Sauger: size limit, fourteen (14) inches.
(d) Barren River Lake, including:
   (a) Barren River to the Highway 100 bridge;
   (b) Long Creek to the Highway 100 bridge;
   (c) Beaver Creek to the Highway 1297 bridge;
   (d) Skaggs Creek to the Mathews Mill Road bridge; and
   (e) Peter Creek to the Peter Creek Road bridge:
1. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.
2. Crappie: size limit, nine (9) inches.
3. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.
(5) Beaver Lake.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) A person shall not possess shad or use shad for bait.
(6) Bert Combs Lake: a person shall not possess shad or use shad for bait.
(7) Boltz Lake: a person shall not possess shad or use shad for bait.
(8) Briggs Lake: a person shall not possess shad or use shad for bait.
(9) Buckhorn Lake: largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(10) Cane Creek in Laurel County. From October 1 through March 31, a person shall:
(a) Not fish except with an artificial bait; and
(b) Release trout.

(11) Carpenter Lake: a person shall not possess shad or use shad
for bait.

(12) Carr Creek Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15)
inches.
(b) Crappie: size limit, nine (9) inches.

(13) Carter Caves Lake.
(a) Fishing shall be during daylight hours only.
(b) Largemouth bass: daily and possession limit, one (1) fish; size
limit, fifteen (15) inches.
(c) A person shall not possess shad or use shad for bait.

(14) Cave Run Lake: largemouth bass and smallmouth bass: slot
limit - a person may keep fish less than thirteen (13) inches or greater
than sixteen (16) inches and shall release fish between thirteen (13)
and sixteen (16) inches.

(15) Corbin Lake: a person shall not possess shad or use shad
for bait.

(16) Cumberland Lake.
(a) Largemouth: size limit, fifteen (15) inches.
(b) Smallmouth bass: size limit, fifteen (15) inches effective until
February 28, 2001. On and after March 1, 2001, the size limit shall be
eighteen (18) inches.

(c) Striped bass: size limit, twenty-four (24) inches; daily and pos-
session limit, two (2) fish.
(d) Crappie: size limit, ten (10) inches.

(17) Cumberland River downstream from Barkley Lake Dam.
(a) Striped bass: daily and possession limit, three (3).
(b) Sauger: size limit, fourteen (14) inches.

(18) Cumberland River from Wolfe Creek Dam downstream to the
Kentucky-Tennessee state line. Brown trout: size limit, twenty (20)
inches; creel limit, one (1).

(19) Cyprus AMAX (currently owned by Ashland Enterprises)
and Robinson Forest Wildlife Management Areas. On impounded
water of the area:
(a) Largemouth bass: size limit, fifteen (15) inches; daily limit three
(3); possession limit, six (6).
(b) Sunfish: daily limit, fifteen (15); possession limit, thirty (30).

(c) Channel catfish: daily and possession limit, four (4).

(d) A person shall not fish:
1. Except during daylight hours; or
2. On Starfire Lake between January 1 and May 31.

(20) Dale Hollow Lake.
(a) Smallmouth bass: slot limit - a person shall release fish be-
 tween sixteen (16) and twenty-one (21) inches. The daily limits shall
not include more than one (1) fish less than sixteen (16) inches long
and one (1) fish greater than twenty-one (21) inches long. [daily-limit,
two (2); size limit, eighteen (16) inches.]
(b) Walleye and its [their] hybrids: daily limit, five (5); [9] size limit,
sixteen (16) inches.
(c) Sauger: daily limit, ten (10); size limit, fourteen (14) inches.

(d) Muskelunge: daily limit, one (1).

(e) Rainbow trout and lake trout.
1. Daily limit, April 1 - October 31: seven (7), no more than two (2)
of which may be taken at one trip. No size limit.
2. Daily limit, November 1 - March 31: two (2); size limit, twenty-
two (22) inches.

(g) Largemouth bass: size limit, fifteen (15) inches;

(h) Crappie: size limit, ten (10) inches.

(21) Dewey Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15)
inches.

(b) White bass, yellow bass, striped bass and their hybrids, singly
or in combination: daily and possession limit, five (5); size limit, fifteen
(15) inches.

(22) Dix River for two (2) miles downstream from Herrington Lake
Dam.
(a) A person shall not fish except with an artificial bait.
(b) Brown trout: size limit, fifteen (15) inches.

(23) Dix River upstream from Herrington Lake. White bass, yellow
bass, striped bass and their hybrids, singly or in combination: daily
limit, twenty (20); possession limit, forty (40); size limit: no more than
five (5) in a daily limit or ten (10) fish in a possession limit shall be
fifteen (15) inches or longer.

(24) Dog Fork, Wolfe County. A person shall;
(a) Not fish except with an artificial bait with a single hook; and
(b) Release brook trout.

(25) East Fork Indian Creek in Menifee County. From October 1
through March 31, a person shall:
(a) Not fish except with an artificial bait; and
(b) Release trout.

(26) Elkhorn Creek downstream from the confluence of the North
and South forks. Largemouth bass and smallmouth bass: slot limit - a
person shall release fish between twelve (12) and sixteen (16) inches.
The daily limit shall not include more than two (2) fish greater than
sixteen (16) inches long.

(27) Elmer Davis Lake.
(a) Largemouth bass: slot limit - a person shall release fish be-
 tween twelve (12) and fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

(28) Fishtrap Lake.
(a) Largemouth bass or smallmouth bass: size limit, fifteen (15)
inches.

(b) White bass, yellow bass, striped bass and their hybrids, singly
or in combination: daily and possession limit, five (5); size limit, fifteen
(15) inches.

(29) Game Farm Lakes.
(a) A person shall not possess shad or use shad for bait.
(b) Upper Game Farm Lake:
1. Largemouth bass and smallmouth bass: size limit, fifteen (15)
inches; daily limit, three (3); possession limit, six (6); and
2. Channel catfish: daily limit, four (4); possession limit, eight (8).

(c) Lower Game Farm Lake:
1. A person thirteen (13) years or older shall not fish; and
2. Daily limit, three (3) fish [regardless] of any species.

(30) Grayson Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15)
inches.

(b) White bass, yellow bass, striped bass and their hybrids, singly
or in combination: size limit, fifteen (15) inches, daily and possession
limit, five (5) fish.

(31) Greenbo Lake. A person shall not possess shad or use shad
for bait.

(32) Green River Lake. Crappie: size limit, nine (9) inches.

(33) Guist Creek Lake. White bass, yellow bass, striped bass and
their hybrids, singly or in combination: daily and possession limit, five
(5); size limit, fifteen (15) inches.

(34) Hawk Creek in Laurel County. From October 1 through March
31, a person shall:
(a) Not fish except with an artificial bait; and
(b) Release trout.

(35) Herrington Lake. White bass, yellow bass, striped bass and
their hybrids, singly or in combination: daily limit, twenty (20); posses-
sion limit, forty (40); size limit: no more than five (5) in a daily limit or
ten (10) fish in a possession limit shall be fifteen (15) inches [longer]
or

(36) Kentucky Lake and the canal connecting Kentucky and
Barley Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15)
inches.
(b) Crappie: size limit, ten (10) inches.

(c) Sauger: size limit, fourteen (14) inches.

(37) Laurel Lake.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) Smallmouth bass: size limit, fifteen (15) inches [effective] until
February 28, 2001. On and after March 1, 2001, the size limit shall be
eighteen (18) inches.

(38) Lebanon City Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15)
inches.
(b) Crappie: size limit, nine (9) inches; daily limit, fifteen (15).
(c) Bluegill and shellcrackers, [singly or in aggregate]: creel
limit, thirty (30).
Channel catfish: creel limit, five (5).

Leary Lake.
(a) A person shall not fish except during daylight hours.
(b) Largemouth bass: daily limit, three (3); possession limit, six (6).
(c) Bluegill: daily limit, fifteen (15), possession limit, thirty (30).
(d) Channel catfish: daily limit, four (4); possession limit, eight (8).

Lincoln Homestead Lake.
(a) A person shall not fish except during daylight hours.
(b) Largemouth bass: daily limit, three (3); size limit, fifteen (15) inches.

Channel catfish: daily limit, four (4); possession limit, eight (8).
(e) A person shall not possess shad or use shad for bait.

Lake Malone. Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

Marion County Lake.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) A person shall not possess shad or use shad for bait.

Mauzy Lake. Largemouth bass; no size limit.

McNeely Lake. A person shall not possess shad or use shad for bait.

Mill Creek Lake, in Powell County. A person shall not possess shad or use shad for bait.

Nolin River Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.
(b) Crappie: size limit, nine (9) inches.

Ohio River.
(a) Walleye, sauger and their hybrids: no size limit; daily limit, ten (10) fish, singly or in combination.
(b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30); no more than four (4) in a daily limit shall be fifteen (15) inches long or longer.

Paintsville Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

Parched Corn Creek, Wolfe County. A person shall:
(a) Not fish except with an artificial bait with a single hook;
(b) Release brook trout.

Peabody Wildlife Management Area, near Gooselake Lake.
(a) Largemouth bass: Size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).
(b) Bluegill: daily and possession limit, fifteen (15).
(c) Redbreast sunfish: daily and possession limit, fifteen (15).
(d) Channel catfish: daily limit, four (4); possession limit, eight (8).
(e) Walleye: size limit, fifteen (15) inches; daily and possession limit, one (1).

A person shall not:
1. Fish:
   a. Except during daylight hours; and
   b. From October 15 through March 15; or
2. Take frogs.

Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 332. A person shall:
(a) Not fish except with an artificial bait with a single hook; and
(b) Release brook trout.

Lake Reba.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) A person shall not possess shad or use shad for bait.

Rock Creek from the Bell Farm Bridge to the Tennessee state line. From October 1 through March 31, a person shall:
(a) Not fish except with an artificial bait; and
(b) Release trout.

Rough River Lake.
(a) Crappie: size limit, nine (9) inches.
(b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.
(c) White bass: for size and creel limit purposes anglers shall consider fish of the Morone family with an unseparated, U-shaped rear tooth patch on the tongue to be white bass.
(d) Hybrid striped bass: for size and creel limit purposes anglers shall consider fish of the Morone family with a separated rear tooth patch on the tongue to be hybrid striped bass.

Shanty Hollow Lake.
(a) Largemouth bass: size limit, fifteen (15) inches.
(b) A person shall not possess shad or use shad for bait.

Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:
(a) Not fish except with an artificial bait with a single hook; and
(b) Release brook trout.

Spurlington Lake. A person shall not possess shad or use shad for bait.

Symson Lake: Largemouth bass: size limit, fifteen (15) inches.

Taylorsville Lake.
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.
(b) Crappie: daily limit, fifteen (15); possession limit, thirty (30); size limits, nine (9) inches.
(c) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

Tennessee River downstream from Kentucky Lake Dam.
(a) Striped bass: daily and possession limit, three (3).
(b) Scaup: size limit, fourteen (14) inches.

Wolf Creek Federal Fish Hatchery, Rainbow trout: [beginning March 1; 9999]; creel limit five (5) in the developed portion of Hatchery Creek from the galvanized culvert/pipe upstream to the hatchery discharge.

Yatesville Lake. Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

DOUGLAS S. PORTER, Assistant Attorney General
C. THOMAS BENNETT, Commissioner
TOM BAKER, Chairman
ANN R. LATTA, Secretary
APPROVED BY AGENCY: March 3, 2000
FILED WITH LRC: August 30, 2000 at 2 p.m.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended at AARRS, November 14, 2000)

301 KAR 2:240. Special bobcat harvest season.

RELATES TO: 150.025, 150.170, 150.360 to 150.370, 150.395 to 150.417 [150.399-150.460] 150.410, 150.411

STATUTORY AUTHORITY: KRS 150.025(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to open and close seasons, make seasons conditional, apply seasons to portions of the state, and promulgate other administrative regulations reasonably necessary to carry out the provisions of KRS Chapter 150. This administrative regulation opens a bobcat taking season in portions of Kentucky, establishes harvest quotas and stipulates tagging requirements.

Section 1. Definitions. (1) "Eastern bobcat zone" means the portion of Kentucky east of a line formed by and including Lewis, Rowan, Manifee, Powell, Estill, Jackson, Rockcastle, Pulaski and Wayne Counties.

RELATES TO: 150.010(23).
(2) "Processed" is defined by KRS 150.010(23).
(3) "Raw fur" is defined by KRS 150.010(28).
(4) "Tagging agent" means a conservation officer, wildlife biologist or other department employee authorized to inspect and tag bobcat carcasses.

RELATES TO: 150.010(21). (5) "Western bobcat zone" means the portion of Kentucky west of a line formed by and including Hancock, Ohio, Muhlenberg, and Logan Counties.

Section 2. A person shall not take:
(1) A bobcat except:
(a) During the open furbearer season as established in 301 KAR 2:251, unless the season closes earlier under the provisions of Sec-
tion 2 of this administrative regulation;
(b) In the eastern or western bobcat zones;
(c) Using hunting or trapping methods authorized by 301 KAR
2:25(1); and
(d) During daylight hours by hunting.
(2) More than three (3) [two (2)] bobcats per season.

Section 3. The department shall:
(1) Close the bobcat season in a zone before the end of the fur-
bearer season if:
(a) 400 bobcats have been harvested in the eastern bobcat zone;
or
(b) 300 bobcats have been harvested in the western bobcat zone.
(2) Distribute public notice of early closure at least twenty-four (24)
hours in advance of the day the season will close.

Section 4. (1) Within forty-eight (48) hours of taking a bobcat, a
person shall take to a tagging agent for inspection and tagging:
(a) The complete unskinned carcass; or
(b) The skinned carcass and the raw fur.
(2) A person shall not:
(a) Remove the tag until the raw fur is processed; or
(b) Possess an unused bobcat tag, unless authorized by the de-
partment.

DOUGLAS S. PORTER, Assistant Attorney General
C. THOMAS BENNETT, Commissioner
TOM BAKER, Chairman
ANN R. LATTAL, Secretary
APPROVED BY AGENCY: August 11, 2000
FILED WITH LRC: August 30, 2000 at 2 p.m.

JUSTICE CABINET
Department of Corrections
Division of Adult Institutions
(As Amended at ARRS, November 14, 2000)

501 KAR 6:050. Luther Luckett Correctional Complex.

RELATES TO: KRS 72.020, 72.025(5). Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470,
439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035,
197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabi-
net and Department of Corrections to promulgate administrative regu-
lations necessary and suitable for the proper administration of the
department or any division therein. These policies and procedures are
incorporated by reference in order to comply with the accreditation
standards of the American Correctional Association.

Section 1. Incorporation by Reference. (1)(a) Luther Luckett Cor-
rectional Complex policies and procedures, September 13, 2000 (No-
overmber 15, 1999), are incorporated by reference.
(b) This material [it] may be inspected, copied, or obtained,
subject to applicable copyright law, at the Office of the General
Counsel, Department of Corrections, 2439 Lawrenceburg Road, PO
Box 2400, Frankfort, Kentucky 40601-2400, Monday through Friday, 8
a.m. to 4:30 p.m.
(2) Luther Luckett Correctional Complex policies and procedures
include:

LLCC 01-12-01 Duty Officer Responsibilities [Amended 11/15/99]
LLCC 01-13-01 Smoking: LLC Facility [Amended 11/15/99]
LLCC 02-01-02 Financial Management: Accounting Procedures
LLCC 02-01-03 Financial Management: Agency Funds [Amended
11/15/99]
LLCC 02-01-04 Financial Management: Insurance [Amended
11/15/99]
LLCC 02-03-01 Financial Management: Audits
LLCC 02-05-05 Canteen Purchase Durable Items [Added
11/15/99]
LLCC 02-06-01 Inmate Control of Personal Funds [Amended
11/15/99] (Renumbered from LLGC 20-05-01)]
LLCC 02-06-02 Storage and Disposition of Monies Received on
Weekends, Holidays and between 4 p.m. and 8
a.m. Weekdays [Amended 11/15/99] (Renumbered from
LLGC 20-05-02)
LLCC 03-02-04 Operation of State and Staff-owned Vehicles
(Added 9/13/00)
LLCC 06-01-01 Offender Records [Amended 11/15/99]
LLCC 08-04-01 Storage of Void Disciplinary Records [Amended
11/15/99]
LLCC 08-05-01 Psychological and Psychiatric Reports [Amended
11/15/99]
LLCC 08-06-01 Institutional Emergency Preparedness Plan (Added
9/13/00)
LLCC 08-07-01 Control of Caustic, Toxic, Flammable, Hazardous
and Other Chemicals (Added 9/13/00)
LLCC 08-08-01 Emergency Squad: Selection, Training and Evalua-
tion (Added 9/13/00)
LLCC 09-01-01 Development of Institutional Post Orders (Added
9/13/00)
LLCC 09-01-02 Interception of LLCC and the Kentucky Correctional
Psychiatric Center (Added 9/13/00)
LLCC 09-01-03 Restricted Areas (Added 9/13/00)
LLCC 09-01-04 Guidelines for Contractors (Added 9/13/00)
LLCC 09-01-05 Search Plan (Added 9/13/00)
LLCC 09-01-06 Contraband Control: Collection, Preservation, and
Identification of Physical Evidence (Added 9/13/00)
LLCC 09-02-03 Tool and Equipment Control (Added 9/13/00)
LLCC 09-02-06 Procedure for Prohibiting Inmate Authority Over
Other Inmates (Added 9/13/00)
LLCC 09-02-07 Inmate Death (Added 9/13/00)
LLCC 10-01-01 Special Management Inmates [Amended 11/15/99]
[Renumbered from LLGC 12-01-01)]
LLCC 11-01-01 Dining Room Guidelines [Amended 11/15/99] (Re-
numbered from LLGC 13-01-01)]
LLCC 11-04-01 Food Service Meals [Amended 11/15/99] (Re-
numbered from LLGC 13-04-01)]
LLCC 11-04-02 Food Service: Menu, Nutrition and Special Diets
[Amended 11/15/99] (Renumbered from LLGC 13-04-02)]
LLCC 11-05-02 Medical Screening of Food Handlers [Amended
11/15/99] (Renumbered from LLGC 10-05-02)]
LLCC 11-06-01 Food services: Inspections and Sanitation
[Amended 11/15/99] (Renumbered from LLGC 13-06-01)]
LLCC 11-07-01 Food Services: Purchasing and Farm Products
[Amended 11/15/99] (Renumbered from LLGC 13-07-01)]
LLCC 11-08-01 OJT Food Service Training Placement [Amended
11/15/99] (Renumbered from LLGC 13-08-01)]
LLCC 11-20-01 Mental Health Services
LLCC 12-01-01 Sanitation, Living Condition Standards and Clothing
Issues [Amended 11/15/99] (Renumbered from
LLGC 14-01-01)]
LLCC 13-01-01 Health Maintenance Services: Sick Call and Pill Call
[Amended 11/15/99] (Renumbered from LLGC 15-
01-01)]
LLCC 13-01-02 Medical Services Co-Pay [Amended 11/15/99]
LLCC 13-03-03 Medication Receipt Storage, Dispensing, and Ad-
ministration [Amended 11/15/99] (Renumbered from
LLGC 15-03-03)]
LLCC 13-03-04 Inmate Self-Administration of Medication [Amended
11/15/99] (Renumbered from LLGC 15-03-04)]
LLCC 13-03-05 Use of Psychotropic Medications [Amended
11/15/99] (Renumbered from LLGC 15-03-05)]
LLCC 13-05-02 Licensure and Training Standards [Amended
11/15/99] (Renumbered from LLGC 15-05-02)]
LLCC 13-06-01 Mental Health Services [Amended 11/15/99]
LLCC 13-06-02 Specialized Health Services [Amended 11/15/99]
LLCC 13-06-03 Emergency Medical Dental Care and Mental Health
Services [Amended 11/15/99] (Renumbered from
LLGC 15-06-03)]
VOLUME 27, NUMBER 6 – DECEMBER 1, 2000

JUSTICE CABINET
Department of Corrections
Division of Adult Institutions
(As Amended at ARRS, November 14, 2000)

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Northpoint Training Center.

Section 1. (1)(a) Northpoint Training Center policies and procedures, September 13, 2000 [14-1999], are incorporated by reference.
(b) This material [it] may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40601-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Northpoint Training Center policies and procedures include:
NCT 01-05-01 Extraordinary Occurrence Reports
NCT 01-10-01 Legal Assistance for Corrections Staff
NCT 01-11-01 Political Activities of Mental Employees
NCT 01-15-01 Establishment of the Warden as Chief Executive Officer
NCT 01-17-01 Relationships with Public, Media and Other Agencies
NCT 02-02-02 Warden’s Participation in the Agency Budgeting Process
NCT 02-03-01 Accounting for Appropriations and Expenditures of Funds
NCT 02-04-01 Internal Control and Monitoring of Accounting Procedures
NCT 02-07-02 Institutional Religious Center Fund
NCT 02-08-01 Inmate Canteen
NCT 02-10-01 Insurance Coverage
NCT 02-12-01 Inmate Accounts [Amended 9/13/00]
NCT 04-01-01 Training and Staff Development
NCT 04-04-01 Firearms and Chemical Agents Training
NCT 06-01-01 Offender Records
NCT 06-01-02 Records - Release of Information
NCT 06-01-03 Taking Offender Record Folders onto the Yard
NCT 08-05-01 The Fire and Safety Officer [Amended 9/14/99]
NCT 08-05-02 Fire Procedures [Amended 9/14/99]
NCT 08-05-03 Fire Prevention [Amended 9/14/99]
NCT 08-05-04 Storage of Flammable and Dangerous Chemicals and Their Uses
NCT 08-07-01 Safety Standards
NCT 10-01-01 Special Management Unit [Amended 9/13/00] [Amended 9/14/99]
NCT 11-03-01 Food Services: General Guidelines
NCT 11-04-02 Menu, Nutrition and Special Diets
NCT 11-05-02 Health Standards and Regulations for Food Service Employees
NCT 11-06-01 Inspection and Sanitation
NCT 11-07-01 Purchasing and Storage of Food Products
NCT 12-01-01 Institutional Inspection [Amended 9/14/99]
NCT 12-02-01 Personal Hygiene for Inmates; Clothing and Linens [Amended 9/13/00] [Amended 9/14/99]
NCT 12-02-02 Issuance of Personal Hygiene Products [Amended 9/14/99]
NCT 12-04-01 Sanitation and Pest Control Officer Post Orders [Added 9/14/99]
NCT 12-06-01 Housekeeping Procedures [Added 9/14/99]
NCT 12-07-01 Grooming and Hair Care Standards [Amended
VOLUME 27, NUMBER 6 – DECEMBER 1, 2000

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. This administrative regulation establishes the policies and procedures for the Blackburn Correctional Complex.


(b) This material [it] may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, Box 2400, Frankfort, Kentucky 40601-2400, Monday through Friday, 8 a.m. to 4:30 p.m. [There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates.]

(2) Blackburn Correctional Complex Policies and Procedures:

BCC 01-07-01 Extraordinary Occurrence Reports
BCC 01-09-01 Legal Assistance for Staff
BCC 01-11-01 Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01 Relationships with Public, Media, and Other Agencies
BCC 01-13-02 Public Information and News Media Access
BCC 01-15-01 Internal Affairs Office
BCC 01-16-01 Tours of Blackburn Correctional Complex
BCC 01-19-01 Inmate Access to BCC Staff
BCC 02-01-01 Inmate Canteen
BCC 02-02-01 Fiscal Responsibility
BCC 02-02-02 Fiscal Management: Accounting Procedures
BCC 02-02-03 Fiscal Management: Checks
BCC 02-02-04 Fiscal Management: Budget ([Amended 6/18/09])
BCC 02-02-05 Fiscal Management: Insurance ([Amended 6/18/09])
BCC 02-02-06 Fiscal Management: Audits ([Amended 6/18/09])
VOLUME 27, NUMBER 6 – DECEMBER 1, 2000

BILLING METHOD FOR SPECIALIZED HEALTH SERVICES

- Extra Duty Assignments
- Inmate Furloughs
- Inmate Visiting
- Outgoing Inmate Packages
- Inmate Correspondence
- Processing of New Inmates From Local Jails
- Classification of the Inmate
- Inmate Work Programs
- Classification of Inmates to Governmental Service Program

- Correctional Industries
- Academic and Vocational School
- Educational Program Evaluation
- Educational Program Planning
- Academic and Vocational Curriculum
- Library Services
- Audio or Video Tape Court Transcripts
- Arts and Crafts/Production and Sale of Items
- Privileged "Trips"
- Recreational Employees
- Recreation and Inmate Activities
- Inmate Clubs and Organizations
- Conducting Inmate Organizational Meetings and Programs
- Recreation Program Availability
- Supervision of Leisure-time Craft Club Activities and Materials
- Music Club
- Use of Inmates in Recreation Programs
- Religious Services
- Duties and Responsibilities of Classification and Treatment Officers
- Duties and Responsibilities of the Unit Director and Assistant to the Unit Director
- Social Services
- Inmate Check Out Procedure
- Supplemental Preparelo Progress Reports
- Citizen Involvement and Volunteer Service Program.

DOUG SAPP, Commissioner
TAMELA BIGGS, Staff Attorney
APPROVED BY AGENCY: September 12, 2000
FILED WITH LRC: September 13, 2000 at 8 a.m.

JUSTICE CABINET

Sex Offender Risk Advisory Board
(As Amended at ARRS, November 14, 2000)

501 KAR 6:220. Treatment for sex offenders.

RELATES TO: KRS Chapters 17.550 to 17.591

STATUTORY AUTHORITY: KRS 17.554(2).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(2) authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish the minimum requirements for treatment of sex offenders. KRS 17.554(2) requires the board to develop a risk assessment procedure that shall be used by certified providers in assessing the risk of an offender committing a sex crime, and the threat to public safety. This administrative regulation establishes minimum treatment requirements for providers.

Section 1. Definitions. (1) "Approved provider" is defined in KRS 17.550(3).

(2) "Board" is defined in KRS 17.550(1).

(3) "Community standards of care" means the standards of care generally accepted by sex offender treatment professionals within the Commonwealth of Kentucky and taking into account the general standards of care for the mental health profession for which the approved provider is licensed or certified.
(d) "Treatment services" is defined in KRS 197.420(2)(b).

Section 2. Procedures for Treatment of Sex Offenders. (1) Treatment shall conform to community standards of care, and shall include:
(a) A diagnosis; and
(b) A written treatment plan, which shall include:
1. Goals and objectives; and
2. Modalities of treatment and the rationale therefor.
(2) Treatment shall be conducted in a psychotherapy format,
(3) Treatment may utilize psychoeducational components where indicated, [and may utilize psychoeducational components-] proposed changes in the [if the approved provider wants to change his] general treatment curriculum;[he shall be submitted [submit the proposed changes] to the board for prior approval;
(b) Obtain written informed consent for treatment from the offender;
(c) Contact the offender’s supervising probation and parole officer to discuss the offender and obtain offender information; and
(d) Make a good faith effort to obtain the offender’s mental health records.

(5) [44] An approved provider shall:
(a) Provide psychological or psychiatric-therapy services or testing as needed or make the appropriate referral and act as liaison for the provision [provisions] of these services;
(b) Utilize a treatment curriculum which, at a minimum, shall include:
1. Treatment services as may be necessary to meet the needs of the individual offender;
2. An emphasis on acceptance of responsibility at the for present and past sexual offending behavior;
3. Gender and culture specific programming; and
4. Education of the offender in:
   a. The cycle of sexual abuse;
   b. Human sexuality;
   c. Deviant arousal and its reduction;
   d. Cognitive restructuring of the sex offender;
   e. Relapse prevention;
   f. Partner and family interactions and support, if applicable;
   g. Victim empathy awareness; and
   h. Relationship skills.
(c) Provide treatment consistent with current professional literature which minimizes the risk of reoffending and emphasizes community safety;
(d) Eighty (80) face-to-face sessions of at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session for a minimum of twenty-four (24) months with at least forty (40) face-to-face sessions conducted during the first twelve (12) months;
(e) Maintain an individual record which shall include documentation of the offender’s attendance and evaluative progress notes;
(f) Obtain a release of information signed by the sex offender which allows the approved provider to release information to probation and parole personnel responsible for the sex offender’s supervision and the Sex Offender Risk Assessment Advisory Board;
(g) Notify the offender’s supervising probation and parole officer in writing when the offender fails to attend a treatment session or fails to make a good faith effort to participate in the treatment;
(h) Cooperate fully with the probation and parole supervision team responsible for a sex offender under the approved provider’s treatment; and
(i) Prepare a treatment summary at discharge from treatment.

GARY L. DENNIS, Ph.D., Chairman
TAMELA BIGGS, Staff Attorney
APPROVED BY AGENCY: September 12, 2000
FILED WITH LRC: September 13, 2000 at 8 a.m.
the Commissioner of Corrections to receive, process and make qualifying [eligibility] determinations on claims for benefits to be paid on death of an [a] eligible employee pursuant to KRS 61.315.

(10) "Parent" means a natural or adoptive parent of the deceased eligible corrections employee living at the time of the employee's death.

(11) "Spouse" means the lawfully wedded husband or wife of the deceased eligible corrections employee living at the time of the death, and includes a spouse;

(a) Living apart from the eligible employee at the time of the death for any reason; or
(b) [or a spouse] involved in divorce proceedings if a final divorce decree has not been entered.

DOUG SAPP, Commissioner
TAMELA BIGGS, Staff Attorney
APPROVED BY AGENCY: September 12, 2000
FILED WITH LRC: September 13, 2000 at 8 a.m.

JUSTICE CABINET
Kentucky Department of Corrections
(As Amended at ARRS, November 14, 2000)

501 KAR 15:020. Filing and processing of death benefit claims.

RELATES TO: KRS 61.315
STATUTORY AUTHORITY: KRS 61.315(5), 196.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.315(5) requires the Department of Corrections to promulgate administrative regulations providing criteria and procedures applicable to filing and processing of death benefit claims, to ensure the proper administration of benefits legally required to be paid to the proper party or parties on the death of eligible corrections employees who have died in the line of duty.

Section 1. Submission of Claim by Proper Party. A death benefit claim shall be filed with the Office of the Commissioner at the Department of Corrections, PO Box 2400, Frankfort, Kentucky 40602-2400. The commissioner's office shall determine the proper party to submit a claim for death benefits in accordance with the following requirements:

(1) The claim shall be submitted and executed by the claimant or the claimant's legally designated representative upon submission of written proof of that designation.

(2) If the claimant is under a disability in terms of mental or physical incapacity or as a result of being a minor, then the claim shall be submitted and executed by the claimant's legally-appointed guardian, committee, trustee or other legal representative upon submission of written proof of the disability and proof of the legal authority of representation by means of an affidavit, certified court record, or other legal document.

Section 2. Proof of Relationship. In filing the claim for death benefits, the claimant or claimant's representative shall submit the following proof of relationship:

(1) If the claimant is a spouse of the eligible employee, the spouse shall submit:

(a) Proof of marriage in the form of a duly-issued and certified marriage license or certificate;
(b) Any other certified government or official report, affidavit of the marriage officiant; or
(c) Affidavit of two (2) witnesses of the marriage. The documentation shall establish the names of parties married and the date and place of marriage. If the claimant spouse or eligible employee has previously been married, a certified divorce decree of any or each previous marriage shall be submitted.

(2) If the claimant is a child of the eligible employee, documentation of the relationship and age shall be provided in the form of:

(a) Certified official vital statistics records;
(b) An adoption decree;
(c) Birth certificate;
(d) Paternity decree [or]
(e) Other government agency record that reveals the age and relationship of the child with the deceased eligible employee; or

(i) If a document listed in paragraphs (a) to (e) of this subsection does not exist, the affidavits of two (2) disinterested credible witnesses or an affidavit of the eligible employee prior to death may provide proof of the eligible employee's recognition of the child as his natural or adopted child [if none of the foregoing documentation is in existence].

(3) If the claimant is a parent, proof of the relationship shall be provided in the form of:

(a) Certified vital statistics records;
(b) A birth certificate;
(c) Adoption decree [or]
(d) Other official government record revealing the parental relationship or

(e) If a document listed in paragraphs (a) to (d) of this subsection does not exist, the affidavits of two (2) disinterested, credible witnesses may provide proof of the eligible employee's recognition of the claimant as his parent [if the foregoing documentation is not in existence].

Section 3. Proof of Death as a Direct Result of an Act in the Line of Duty. The claimant shall provide proof of death of the eligible employee as a direct result of an act in the line of duty by providing the following:

(1) A certified copy of the employee's death certificate; [and]
(2) If requested by corrections:
(a) A certified autopsy report;
(b) [if requested by corrections; or other sworn medical evidence as to the cause of death]. A coroner's report or other formal investigative report, if made; or
(c) Other sworn medical evidence as to the cause of death; and

(3) Any other relevant document [Other documents that may be deemed necessary by the Office of the Commissioner.

Section 4. Filing the Claim. (1) In order to file a claim for benefits payable on the death of an [a] eligible employee, the claimant shall file each completed form provided by the Office of the Commissioner, including the survivor's claim for death benefits and [along with] the appropriate documentary proof as requested.

(2) The claim for death benefits shall be filed with the Office of the Commissioner within six (6) months from the date of the death of the eligible employee for which the claim is made, unless the commissioner extends the filing deadline for good cause shown by the claimant.

(3) The Office of the Commissioner may [at any time] require, at any time during the pendency of the claim, additional evidence to be submitted with regard to:

(a) Entitlement;
(b) The right to receive payment;
(c) The amount to be paid; or
(d) Any other material issue.

(4) If [Whenever] a claimant [for benefits] submits no evidence or insufficient evidence of [a] material issue or fact, the Office of the Commissioner shall inform the claimant what evidence is required for a determination as to the issue or fact and shall request that the claimant submit the evidence within forty-five (45) days from the date of the request of the Office of the Commissioner.

(5) A [The] claimant's failure to submit evidence on a material issue or fact as requested by the Office of the Commissioner shall be a basis for determining that the claimant fails to satisfy the conditions required to award death benefits to the claimant.

(6) After the claim has been filed and the Office of the Commissioner determines the claimant has submitted, or failed to submit, all reports, documents and evidence required to be submitted, the Office of the Commissioner shall render a decision on the claim within forty-five (45) days.

(7) A claim for benefits may be withdrawn at any time upon written notice to the commissioner signed by the claimant or claimant's representative.

(8) Upon making a finding of eligibility, the Office of the Commissioner shall, by writing, notify the claimant at the claimant's last known address of its disposition of the claim. Payment shall be made to the
claimant as soon thereafter as practicable, with corrections presenting
the claim to the State Treasurer within five (5) working days.
(9) If [in any case where] the Office of the Commissioner finds the
claimant ineligible for a death benefit, the Office of the Commissioner
shall notify the claimant in writing at claimant's last known address
of its disposition and shall set forth findings of fact and conclusions of
law supporting the decision, as well as claimant's right to a hearing and
review by the secretary.

Section 5. Priority and Amount of Claim Benefits. Upon final de-
termination of eligibility for benefits, the benefits shall be paid pursuant
to KRS 61.315(2).

DOUG SAPP, Commissioner
TAMELA BIGGS, Staff Attorney
APPROVED BY AGENCY: September 12, 2000
FILED WITH LRC: September 13, 2000 at 8 a.m.

TRANSPORTATION CABINET
Office of Transportation Delivery
(As Amended at ARRS, November 14, 2000)

603 KAR 7:080. Human service transportation delivery.

RELATES TO: KRS Chapters 96A, 151B, 157, 163, 194, 195,
202A, 202B, 205, 209, 210, 216, 273, 281, 645, 49 USC Chapter 53
STATUTORY AUTHORITY: KRS [96A.095]: 281.600, 281.605,
281.620, 281.675, 49 USC Chapter 53
NECESSITY, FUNCTION, AND CONFORMITY: 49 USC Chapter
53 authorizes the formation and funding of human service transporta-
tion deliveries to transportation providers [in urban, urbanized, and
nonurbanized areas]. KRS 96A.095 allows the Transportation Cabinet
to accept funding [from any source and to use the funding] to promote
and develop mass transportation services in Kentucky. For the pur-
pose of providing efficient, effective, safe, and coordinated transpor-
tation delivery to clients of the program groupings the Empower Ken-
tucky Transportation Delivery work group recommended that a single
agency be responsible for the transportation component of the pro-
grams. The function of this administrative regulation is to implement
the procedures required to administer this program. Since many of
the transportation providers are required by federal law or regulation
to comply with safety and accountability procedures and the Transpor-
tation Cabinet is authorized in KRS 281.600 to establish safety criteria
for a commercial transportation provider, all of the transportation pro-
viders, except a volunteer transportation provider, which receive
funding under the provisions of this administrative regulation shall be
required to comply with the same safety and accountability require-
ments.

Section 1. Definitions. (1) ['Ambulatory disadvantaged and nonam-
bulatory' means as defined in 507 KAR 1:081, Section 1(16)].

(2) "Broker" is [means as] defined in KRS 281.014(8) [2000 Ky:
Acts ch-346].

(3) "Certificate Types 01, 02, 03, 04, 07, and 08" is defined
In KRS 281.873(1)(a)-(f) [means as defined in 2000 Ky: Acts ch-346].

(4) "CTAC" is [means as] defined in KRS 281.014(10) [2000 Ky:
Acts ch-346].

(5) "Delivery area" is [means as] defined in KRS 281.014(7)

(6) "Human service transportation delivery" is [means as]
defined in KRS 281.014(6) [2000 Ky: Acts ch-346].

(7) "Level of eligibility" is [means as] defined in KRS
281.873(1)(q) [2000 Ky: Acts ch-346].

(8) "Mass transportation" is [means as] defined in KRS
96A.010.

(9) "Mileage reimbursement" means a fixed rate per mile a
motor vehicle is operated that:
(a) Does not exceed the expense of operating the motor vehicle;
or
(b) Is not considered a benefit of wage payment. [The rate shall
not exceed the expense of operating the motor vehicle. Mileage reim-
bursement is not considered to be a benefit or payment of wages.]

(9) ["Provider" means an individual with appropriate operat-
ing authority performing transportation operations for human service
transportation delivery.]

(10) ["Recipient" means a person that is receiving benefits
under one (1) of the programs listed in Section 3 of this administrative
regulation and meets the criteria of the participating program.

(11) "RFP" means request for proposal.

(12) "Subcontractor" is defined in KRS 281.014(9) [means as
defined in 2000 Ky: Acts ch-346].

(13) "TANF" means an acronym for Temporary Assistance for
Needy Families Program administered by the Cabinet for Families and
Children.

(14) "Urgent care" means:
(a) An unscheduled episodic situation when there is not a threat
of life or limb, but the recipient must be seen within a time frame, which is
less than the seventy-two (72) hour required notice, and treatment
cannot be delayed; and
(b) [For purposes of this administrative regulation.] "Urgent
care" Does not include:
1. [a] Emergency trips which are to be addressed by qualified
emergency services; or
2. [a] Instances whereby recipients are required to be seen by a
licensed medical provider or another licensed medical provider to
whom the person is being referred for medical treatment with less than
seventy-two (72) hours' notice. See Section 10 [10](7)(a); (b)-(c) of
this administrative regulation.

(15) "Volunteer transportation" means transportation provided by
a person or entity as a charitable act without the expectation of receiving
a benefit, or being paid a wage.

(16) "24-7 [twenty-four seven] human service transportation deliv-
ery" means twenty-four (24) hours a day and seven (7) days a week.

Section 2. Newly established transportation regions shall be in
effect no later than July 1, 2001, and shall be as follows:

(1) Region 1:
(a) Ballard;
(b) Calloway;
(c) Cadiz;
(d) Fulton;
(e) Graves;
(f) Hickman;
(g) Marshall; and
(h) McCracken.

(2) Region 2:
(a) Caldwell;
(b) Christian;
(c) Crittenden;
(d) Hopkins;
(e) Livingston;
(f) Lyon;
(g) Mulherin;
(h) Todd; and
(i) Trigg.

(3) Region 3:
(a) Daviess;
(b) Hancock;
(c) Henderson;
(d) McLean;
(e) Ohio;
(f) Union; and
(g) Webster.

(4) Region 4:
(a) Breckinridge;
(b) Grayson;
(c) Hardin;
(d) Larue;
(e) Marion;
(f) Meade; and
(g) Nelson.

(5) Region 5:
(a) Adair;
(b) Allen;
(c) Barron;
(d) Butler;
(e) Edmonson;
(f) Green;
(g) Hart;
(h) Logan;
(i) Metcalfe;
(j) Simpson;
(k) Taylor; and
(l) Warren.
(g) Region 6:
(a) Jefferson;
(b) The following counties shall be added to Region 6 effective July 1, 2001:
1. Bullitt;
2. Oldham;
3. Shelby; and
4. Spencer.
Region 7. The following counties shall be in Region 7 until July 1, 2001:
(a) Bullitt;
(b) Henry;
(c) Oldham;
d) Shelby;
(e) Spencer; and
(f) Trimble.
(g) Region 8:
(a) Anderson;
(b) Boyle;
(c) Casey;
(d) Franklin;
(e) Garrard;
f) Jessamine;
(g) Lincoln;
h) Mercer;
i) Scott;
i) Washington; and
(k) Woodford.
(g) Region 9:
(a) Boone;
(b) Campbell;
(c) Carroll;
(d) Gallatin;
(e) Grant;
(f) Kenton;
(g) Owen; and
(h) Pendleton.
(i) The following counties shall be added to Region 9 effective July 1, 2001:
1. Henry; and
2. Trimble.
(10) Region 10: Fayette.
(11) Region 11:
(a) Bourbon;
(b) Clark;
(c) Estill;
(d) Harrison;
(e) Madison;
(f) Montgomery;
(g) Nicholas; and
(h) Powell.
(12) Region 12:
(a) Bell;
(b) Clinton;
(c) Cumberland;
(d) Knox;
(e) Laurel;
(f) McCracken;
(g) Monroe;
(h) Pulaski;
i) Rockcastle;
(j) Russell;
k) Wayne; and
(l) Whitley.
(13) Region 13:
(a) Breathitt;
(b) Clay;
(c) Harlan;
(d) Jackson;
(e) Knott;
(f) Lee;
(g) Leslie;
(h) Letcher;
(i) Owsley;
(j) Perry; and
(k) Wolfe.
Region 14:
(a) Floyd;
(b) Johnson;
(c) Magoffin;
(d) Martin; and
(e) Pike.
Region 15:
(a) Bath;
(b) Boyd;
(c) Carter;
(d) Elliott;
(e) Breathitt;
(f) Lawrence;
(g) Menifee;
(h) Morgan; and
(i) Rowan.
Region 16:
(a) Bracken;
(b) Fleming;
(c) Lewis;
(d) Mason; and
(e) Robertson.

Section 3. Service Programs. (1) Excluding nonemergency ambulance stretchers transportation, nonemergency medical transportation, pursuant to KRS Chapter 205, 907 KAR 1:060, and 907 KAR 3:066, [Nonemergency medical transportation pursuant to KRS Chapter 205 and 907 KAR 1:060 and 907 KAR 3:066, excluding nonemergency ambulance stretchers transportation,] shall be provided as follows:
(a) A broker shall transport any Medicaid-eligible recipient with a county code residence in the broker's delivery area. The broker shall be responsible for transportation arrangements when the recipient is coded in the broker's delivery area, but has moved or is living in another human service transportation delivery area. The broker shall not be responsible for recipients not coded in the recipient's county of residence.
(b) Services outside the recipient's county or contiguous county shall have a referral by the recipient's licensed medical provider before transport.
(c) Nonemergency medical transportation shall be for a medically-covered and medically-necessary service in accordance with Medicaid regulations. The nonemergency Medicaid cardholder shall be transported to a Medicaid-covered service accompanied by a guardian or escort when necessary.
(d) A parent or a guardian shall accompany a minor the age of twelve (12) years and under to a Medicaid-covered service. A parent or a guardian may accompany a minor between the ages of thirteen (13) and seventeen (17). The parent, guardian or escort shall not be charged a fare.
(e) A nonemergency medical recipient shall not be eligible if free transportation is available, such as but not limited to, a facility, family member, or neighbor providing free transportation, which is appropriate for the recipient's medical needs. A nonemergency medical recipient shall not be eligible if an appropriate operational household vehicle is available as denoted in 907 KAR 1:060.
(2) Transportation pursuant to the Kentucky Works Program shall be provided as follows:
(a) Recipients shall be transported to covered services or TANF component activities in the county of residence or contiguous county. Transportation services shall include employment, child daycare con-
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TERS, job interviews, and training.

(b) Transportation shall be provided for training at [such as: but not limited to] vocational, community colleges, universities and high schools within the recipient's county or human service transportation delivery area and contiguity to the human service delivery area.

(c) The broker shall pay a TANF recipient before or during the month of transportation services. Payment shall be contingent upon the TANF recipient receiving necessary authorization from the broker to use his or her private automobile, or the TANF recipient having access to an available automobile, to training, or employment activities.

(3) Other programs under the human service transportation delivery system shall include:

(a) Vocational rehabilitation pursuant to KRS Chapter 151B or 153;

(b) Vocational rehabilitation for the blind pursuant to KRS Chapter 151B or 153;

(c) Mental health, mental retardation, development disabilities, comprehensive care or substance abuse services pursuant to KRS Chapter 202A, 202B, 210, or 645; and

(d) Office of Aging Services under KRS Chapter 205, 209, 216, or 273.

(4) The state governmental agencies responsible for implementing the programs set forth in this section shall provide to the Transportation Cabinet:

(a) A monthly list of the persons eligible to receive human services transportation pursuant to the programs set forth in this section, including special Medicaid waiver listings;

(b) The address of each person on the list; and

(c) A program for which each person on the list is eligible.

(5) A denial of a service as provided in subsections (1), (2), and (3) of this section shall be pursuant to the provisions of Section 14 of this administrative regulation.

Section 4. Coordinated Advisory Transportation Committee (CTAC). (1) The CTAC shall be composed of members designated by the:

(a) Cabinet for Health Services;

(b) Cabinet for Families and Children;

(c) Cabinet for Workforce Development; and

(d) the Transportation Cabinet.

(2) The Cabinets for Health Services, Families and Children, and the Transportation Cabinet shall each have two (2) voting members and Workforce Development shall have one (1) voting member.

(3) CTAC duties and responsibilities shall include:

(a) Providing [and] reviewing information and assistance to the cabinet [Office of Transportation Delivery (OTD)];

(b) Reviewing and recommending [and] review policies and operating procedures to the cabinet [OTD]; and

(c) Serving on broker evaluation committees, if designated, in accordance with KRS Chapter 45A.

(4) Assist with regulatory needs related to the Human Service Transportation Delivery Program.

Section 5. Transportation Broker Selection Process. (1) A request for proposal (RFP) and the process of awarding a brokerage contract for each region shall comply with KRS Chapter 45A. The RFP evaluation process shall, at a minimum, address areas that include [including but not limited to] the following:

(a) Overall quality in transportation delivery;

(b) Administration;

(c) Insurance and risk management, types and levels of insurance coverage and emergency process, and training offered to reduce business risk;

(d) Financial capability;

(e) Operations;

(f) Fleet management;

(g) Computer software and hardware;

(h) Reporting for both the broker and subcontractor; and

I. Vehicle inspection or maintenance programs, [Transportation Administration: Human Resources: Insurance Risk: Management: Billing and Accounting;]

J. Transportation - Operations - Scheduling/Reservations; Fleet Management;

K. Dispatching and Radio Communications: Software/Hardware: Reporting for both the broker and subcontractor; vehicle inspection or maintenance programs described;

L. Experience and qualifications. In accordance with KRS 281.675(2) and (3) [2000 Ky. Acts ch. 346], a person that submits a request for proposal to be a broker under the human service transportation delivery program shall be required to submit documentation that he or she has [they have] the or the knowledge at least one (1) year experience working with persons with special needs. The cabinet shall be prohibited from awarding higher scores, or giving any type of preference to any person that submits a request for proposal to be a broker, who is also a transportation provider, over a person who submits a request to be a broker and is not a transportation provider;

(c) Ability to coordinate trips with:

1. Local community based governmental offices;

2. Training, educational or medical centers; and

3. Coordination with other transportation providers;

(d) Operational characteristics which include:

1. Locations of operations;

2. Infrastructure and other resources;

3. Storage of records;

4. Security and confidentiality of recipient and provider information;

5. Coverage of the delivery area hours, days, and operators availability; and

6. Education and training programs, [Coordinating Trips Coordination with local community based governmental office; training/educational or medical centers; coordination with other transportation providers;]

(d) Operational characteristics: Operational characteristics include locations of operations; resource use; storage of records; security and confidentiality of recipient and provider information; coverage of the delivery area hours, days, and operators availability;

(2) Contractual agreements between the Transportation Cabinet and brokers,

(a) Each contract between the cabinet and broker shall be for one (1) year with three (3) one (1) year options to renew,

(b) Contracts shall be on a fiscal year basis, running July 1 through June 30,

(3) Operating authority. Except for a volunteer provider, each transportation provider shall have operating authority issued by the Transportation Cabinet pursuant to KRS Chapter 281 or 96A.

(4) A contract between the cabinet and the broker shall be subject to revocation in accordance with KRS 281.879 [2000 Ky. Acts ch. 346]. Furthermore, the contract shall be subject to termination by the Commonwealth in accordance with 200 KAR 5.312.

Section 6. Transportation Broker. (1) A broker may coordinate the human service transportation delivery program with general public transportation as provided in KRS 281.877 [2000 Ky. Acts ch. 346].

(2) The broker shall make reports to the cabinet on all traffic accidents and moving violations involving either a broker or subcontractor while transporting a human service transportation passenger.

(3) The broker shall have all reports pertinent to payment to the cabinet not later than the seventh of each month following the reporting period.

(4) The cabinet shall reimburse the broker not later than the 15th of each month, if the broker has submitted the required reports.

(5) Brokers shall promptly reimburse subcontractors and Medicaid private auto providers within three (3) business days of being paid by the cabinet each month for each valid invoice trip documentation.

(6) A valid subcontractor or private auto provider invoice post-dated after the first shall be included in the next month's billing.

(7) TANF private auto providers shall be paid before the service month.

(8) The broker shall have an established operating office located within the awarded delivery area.

(9) The broker shall employ an adequate staff to accommodate
reservations, oversight of timely pickup and delivery, scheduling, accounting, complaint tracking, safety compliance and reporting to the cabinet.

6. All brokers shall provide transportation services for recipients eligible under Section 3 of this administrative regulation.
   (27) Brokers shall, on the initial trip, advise each recipient of the availability of the program coordinator and the manner in which they can be contacted. The recipient may contact the program coordinator regarding complaints or questions about the services provided.

Section 7. Orientation Program. (1) [Recruiting transportation providers.] All brokers shall provide an orientation program to each subcontractor and potential subcontractor [packet] approved by the cabinet to each potential subcontractor. The broker shall meet with potential subcontractors as a regional group, or on an individual basis, to discuss and clarify the orientation packet. The program [packet] shall at a minimum include:
   (a) How and when payment will be made;
   (b) Rates;
   (c) Vehicle requirements;
   (d) Driver conduct;
   (e) Driver qualifications;
   (f) Reporting requirements;
   (g) Communication systems;
   (h) Pickup and delivery standards;
   (i) Training;
   (j) Drug and alcohol testing;
   (k) Safety;
   (l) Confidentiality;
   (m) Levels of transportation;
   (n) Escort and attendants;
   (o) Contract compliance; and
   (p) Scheduling and availability and standard state transportation requirements.

   (2) The role of the program coordinator as required by KRS 281.875(2) [2006 Ky. Acts ch. 346, sec. 4].

   (3) Orientation meetings between the broker and subcontractor shall be held before the subcontractor provides transportation services. Subsequent meetings may be held to clarify new policies and administrative regulations, or as directed by the cabinet.

Section 8. Subcontractors and Volunteers. (1) A subcontractor, who has signed a contract with a broker to provide human service transportation delivery within a specific delivery area, shall meet human service transportation delivery requirements, including proper operating authority by county or city.

(2) The subcontractor shall not enter into an agreement with a broker without the prior approval of the Transportation Cabinet. Each broker shall submit and request approval of the cabinet for each potential subcontractor. The subcontractor shall submit the following documentation to the broker:
   (a) A copy of the subcontractor’s operating authority;
   (b) Proof of the subcontractor’s vehicle liability insurance; and
   (c) The draft of the broker and subcontractor’s agreement.

   (3) A copy of all vehicle lease agreements; and
   (d) All contracts shall, at a minimum, include:
      1. Payment administration as required by KRS 281.875.1(1) [2006 Ky. Acts ch. 346, sec. 7(1)(H)];
      2. Hours of operations and other scheduling requirements;
      3. Rates for services;
      4. Pickup and delivery standards;
      5. Contract duration; and
      6. Termination clause and compliance penalty provisions, [which shall include business name, hours of operation, rates, driver qualifications, vehicle qualifications, pickup and delivery standards and compliance penalty provisions.]

(3) Brokers and subcontractors shall ensure and provide documentation to the cabinet that all drivers during employment shall:
   (a) Be legally licensed by the Commonwealth of Kentucky to operate the transportation vehicle to which they are assigned;
   (b) Be competent in their driving habits;
   (c) Be courteous, patient and helpful;
   (d) Be at least eighteen (18) years of age;
   (d) [e] Have no more than two (2) convictions for moving violations in the last three (3) years;
   (e) [f] Have no prior convictions for a drug or alcohol-related offense in the last five (5) years, if a driver or attendant;
   (f) [g] Have no convictions of any sexual crime or crime of violence;
   (g) [h] Have a preemployment drug test, and
   (h) [i] Receive orientation and safety training;
   (i) Have a drug and alcohol policy; employee lists for drug pools;
   (j) Have lease agreements;
   (k) Have completed nonemergency Medical Assistance Program Forms 3483 and 3485; and
   (l) Have vehicle inventory lists.

(4) Any person who has been convicted of a felony during the last five (5) years shall drive or attend passengers only after review and approval by the broker, subcontractor and the cabinet.

(5) Volunteer transportation providers shall have:
   (a) A valid driver’s license;
   (b) Proof of insurance and registration; and
   (c) A vehicle which meets the safety needs of the recipient. If requested, the transportation broker shall provide mileage reimbursement to a volunteer transportation provider. The broker shall obtain proof of insurance and a valid driver’s license from the volunteer provider.

(6) The subcontractor and the private auto provider shall submit a valid invoice to the broker by the first of each month to allow for accounting, payment processing, and mailing time for payment to be paid within three (3) business days of payment received from the cabinet.

(7) A valid invoice postdated after the fifth day of the month shall be included in the next month’s billing.

(8) Subcontractors and private auto providers shall submit all valid invoices within six (6) months of the date of service for reimbursement by the broker.

(9) A subcontractor shall report to the broker any moving violations or traffic accidents to the broker within thirty (30) days.

(10) A subcontractor shall not participate in determining recipient eligibility or type of transport.

Section 9. Vehicle Requirements. (1) The broker shall assure that all transportation providers maintain all vehicles and vehicle equipment adequately. Vehicles and all components shall comply with or exceed the manufacturers, state and federal, safety and mechanical operating and maintenance standards for the particular vehicles and models used. Vehicles shall comply with all applicable federal laws including the Americans With Disabilities Act of 1990 (ADA). Any vehicle found noncompliant with the Cabinet, Department of Vehicle Regulation’s licensing requirements, operating authority requirements, safety standards, or requirements shall be removed from service immediately. All vehicles shall meet the following requirements:

   (a) The transportation provider shall provide and use a two (2)-way communication system linking all vehicles used in delivering the services. The two (2)-way communication system shall be used in a manner that facilitates communication and minimizes the time in which out-of-service vehicles can be replaced or repaired;

   (b) All vehicles shall be equipped with adequate heating and air conditioning for driver and passengers. Any vehicle with a nonfunctioning climate control system shall be placed out-of-service until appropriate corrective action is taken;

   (c) All vehicles shall have functioning, clean and accessible seat belts for each passenger seat position and belts shall be stowed off the floor when not in use. Each vehicle shall utilize child safety seats when transporting children under age five (5). Each vehicle shall have at least two (2) seat belt extensions provided. Additionally, each vehicle shall be equipped with a seat belt cutter, mounted above the driver’s door, for use in emergency situations;

   (d) All vehicles shall have a functioning speedometer and odometer;

   (e) All vehicles shall have a functioning interior lights within the passenger compartment;

   (f) All vehicles shall have adequate side walk, padding and ceiling covering;

   (g) All vehicles shall be smooth riding;
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(b) All vehicles shall have two (2) exterior rear view mirrors, one (1) on each side of the vehicle;

(i) All vehicles shall be equipped with an interior mirror which shall be either clear-view laminated glass or clear-view glass bonded to the back which retains the glass in the event of breakage. This interior mirror shall be for monitoring the passenger compartment;

(ii) The vehicle’s interior and exterior shall be clean and have exterior free of broken mirrors or windows;

(iii) The vehicle shall have passenger compartments that are clean, free from torn upholstery or floor covering, damaged or broken seats, and protruding sharp edges and shall also be free of dirt, oil, grease or litter;

(iv) The vehicle floor shall be covered with commercial anti-slip, rubber flooring or carpeting. Ribbing shall not interfere with wheelchair movement between the lift and the wheelchair position;

(m) All vehicles shall have the transportation provider’s name, vehicle number, and the program coordinator’s customer service phone number prominently displayed within the interior of each vehicle. This information shall also be available in written form on each vehicle for distribution to riders on request;

(n) All vehicles shall have the following signs posted in all vehicle interiors, easily visible to the passengers: 1. "No Smoking, Eating or Drinking;" and 2. "All passengers shall use seat belts;"

(o) All vehicles shall be equipped with a functional fire extinguisher and shall display a current inspection tag or sticker;

(p) All vehicles shall include a retractable step, or a step stool as approved by the cabinet in aid in passenger boarding. The step stool shall be used to minimize ground-to-first-step height, shall [choose] have four (4) legs with anti-skid treads, sturdy metal with non-skid treads, with a height of eight and one-fourth (8 1/4) inches, a width of fifteen (15) inches, and a depth of fourteen (14) inches or an equally suitable replacement. Under no circumstances shall a milk crate or similar substitute be considered a viable alternative for a step stool. Milk crates or similar substitutes shall not be permitted on any vehicle;

(q) All vehicles shall have on board three (3) portable triangular reflective mounted on stands;

(r) All vehicles shall include a vehicle information packet to be stored in the driver compartment, or securely stored on or in the driver’s side visor. This packet shall include:

1. Vehicle registration;
2. Insurance card;
3. Bus or vehicle (bus/vehicle) card; and
4. Accident procedures and forms;

(s) All vehicles shall be provided with a fully equipped first aid kit and a “spill kit” including: liquid spill absorbent, latex gloves, hazardous waste disposal bags, scrub brush, disinfectant and deodorizer; and

(t) Each vehicle shall contain maps with sufficient detail to locate recipients and destinations.

(2) Lift-equipped vehicle requirements. All vehicles used to transport wheelchair passengers, at a minimum, meet the following ADA requirements:

(a) A floor-to-ceiling height clearance of at least fifty-six (56) inches for vehicles up to twenty-two (22) feet and of at least sixty-eight (68) inches for vehicles above twenty-two (22) feet in the passenger compartment;

(b) An engine-wheelchair lift interlock system which requires the vehicle’s transmission be placed in park and emergency brake engaged to prevent vehicle movement when the lift is deployed;

(c) A hydraulic or electromechanically powered wheelchair lift mounted so as not to impair the structural integrity of the vehicle that meets the following specifications:

1. Is capable of elevating and lowering a 600-pound load and shall not cause the outer edge of the lift to sag, or lift downwards more than one (1) inch, nor shall the platform deflection be more than three (3) degrees under 600-pound load;

2. Lift platform is at least thirty-three (33) inches wide and forty-eight (48) inches long;

3. The lift platform shall not have a gap between the platform surface and the roll-off barrier greater than five-eight (5/8) inch. When raised, the gap between the platform and the vehicle floor shall not exceed one-half (1/2) inch horizontally and five-eight (5/8) inch vertically;

4. Lift controls shall be operable and accessible from inside and outside the vehicle, and shall be secure from accidental or unauthorized operation;

5. The lift shall be powered from the vehicle’s electrical system. In the event of a power failure, the lift platform shall be able to be raised or lowered manually with passengers, and shall provide a method to slow free-fall in the event of power or component failure;

6. The lift operation shall be smooth without any jerking motion. Movement shall be less than or equal to six (6) inches per second during lift cycle and less than or equal to twelve (12) inches per second during storage cycle;

7. When in storage in the passenger compartment, the lift platform shall not be capable of falling out of or into the vehicle, even if the power should fail;

8. The lift platform shall have a properly functioning, automatically engaged, anti-roll-off barrier, with a minimum of one and one-half (1 1/2) inch on the outbound end, to prevent ride over;

9. It is preferable but not required, that the platform, when in a stored position, not intrude into the body of the vehicle more than twelve (12) inches and be equipped with permanent vertical side plates to a height of at least two (2) inches above the platform surface;

10. The lift platform surface shall be a nonskid expanded metal, mesh or equivalent, to allow for vision through the platform;

11. The lift shall be furnished with reflector tape on each side except the side adjacent to the vehicle and on all step edges, thresholds and the boarding edge of lift platform; and

12. The lift platform on vehicles shall be equipped with a handrail on both sides of the lift platform for the purpose of loading or unloading ambulatory passengers. The handrail shall meet the following requirements: maximum height range thirty (30) inches to thirty-eight (38) inches; knuckle clearance handhold one and one-half (1 1/2) inch; shall be able to withstand force of 100 pounds; [and] the handrail shall not reduce the lift platform width of at least thirty (30) inches; and shall be a ramp-equipped vehicle meeting ADA specifications;

(d) Wheelchair restraint system - for each wheelchair position, a wheelchair securement device (or its down) shall be provided that shall:

1. Be placed as near to the accessible entrance as practical, providing clear floor area of thirty (30) inches by forty-eight (48) inches. Up to six (6) inches may be under another seat if there is nine (9) inches height clearance from floor. Vehicles in excess of twenty-two (22) feet shall have at least one (1) forward-facing position. Additional positions may be forward facing or rearward, if there is a padded barrier;

2. Be tested to meet a thirty (30) m.p.h./twenty (20) gms standard;

3. Securely restrain the wheelchair during transport from movement forward, backward, lateral and overturning movements in excess of two (2) inches;

4. Be adjustable to accommodate all wheel bases, tires (including pneumatic) and motorized wheelchairs;

5. Be a lock system, belt system or both and acceptable to the cabinet. If a belt system is used the cargo strap shall be retractable or stored on a mounted clasp or in a storage box when not in use. A tract mounting lock system on the floor for wheelchair securement shall be flush with the floor so as not to be an obstruction or become a tripping hazard. In all cases, the straps shall be stored properly when not in use; and

6. Provide seat belts or a shoulder harness that are attached to the floor or to the side of the vehicle; which shall be capable of securing both the passenger and wheelchair;

(e) Wheelchair entrance door shall:

1. Maintain a minimum vertical clearance of fifty-six (56) inches for vehicles or less in length (sixty-eight (68) inches for vehicles over twenty-two (22) feet in length) and a minimum clear door opening of thirty (30) inches wide;

2. Have no lip or protrusion at the door threshold of more than one-half (1/2) inch; and

3. Be equipped with straps or locking devices to hold the door open when the lift is in use;

Section 10, Scheduling. (1) The recipient or his or her guardian shall call the regional broker of the recipient’s county residence at
least seventy-two (72) hours prior to the scheduled appointment to schedule a trip. 

(2)(a) All brokers shall offer scheduling and transportation services between 8 a.m. to 4:30 p.m., Monday through Friday, and 8 a.m. to 1 p.m. on Saturday.
(b) In additional, transportation services shall be offered between 6 a.m. to 5 p.m. Monday through Friday.
(c) Scheduling and business functions may be closed for New Year’s Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day.

(3)(a) The broker shall have, at a minimum, paging services after normal scheduling periods for urgent care services.
(b) Urgent care shall be provided twenty-four (24) hours a day, seven (7) days a week, including all holidays.
(c) Urgent care may be scheduled or requested anytime.
(d) TANF recipients may have need for immediate transportation to employment or training, including transport of a recipient’s child from a daycare facility, due to an illness or a family emergency.
(e) An immediate transportation need may be [scheduling] required anytime.
(f) The broker may schedule and provide trips for recipients after the normal scheduling hours for special circumstances. The broker may provide the reliable recipient transportation service and may contact the cabinet for guidance. For purposes of this section, special circumstances shall, at a minimum, include:[but not limited to:] dialysis treatments available only on weekends, or TANF transportation for evening shift employment.

(5) The broker shall collect the following information on each incoming call:

(a) Name;
(b) Address of pickup and delivery;
(c) Date of appointment;
(d) Time of appointment;
(e) Program identification;
(f) Telephone number; and
(g) Special needs including:
   1. Child safety seats; or
   2. Lift-equipped vehicle. [The broker shall collect the vital information: name, address of pickup and delivery, date, time of appointment, special needs, such as child safety seats, lift-equipped vehicle, program identification, and phone number to be included on each incoming call.]

(8) The broker shall confirm the trip has been scheduled. 

(9) In order to waive the seventy-two (72) hour notice requirement, the licensed medical provider verification may be transmitted in any of the following methods:

(a) Written verification on the licensed medical provider’s letterhead delivered by the person directly to the broker;
(b) Written verification transmitted electronically by computer or by facsimile. The transmittal shall include the licensed medical provider’s letterhead or office name and be submitted from the licensed medical provider’s office directly to the broker’s office; or
(c) Oral verification over the telephone.

1. If written verification cannot be submitted, the broker may initiate a call to the licensed medical provider requesting oral verification that the recipient must be seen at the appointed time.
2. If the licensed medical provider initiates the call, the broker may return the call to verify legitimacy of the call.

Section 11. Eligibility. (1)(a) With the cabinet’s direction, each broker shall have direct computer access to all relevant data bases needed to determine eligibility.
(b) If there is a question regarding eligibility, and time does not warrant technological updates, the broker shall contact the cabinet for assistance in determining eligibility.
(c) The cabinet shall initially investigate all complaints regarding subcontractors and the broker for the area and attempt to immediately resolve the problem.
(d) The cabinet shall forward all complaints relating to Medicaid fraud or abuse to the Cabinet for Health Services.

(2)(a) Nonemergency medical recipients who do not require escorts or special-equipped vehicles, may be transported by taxi, community and city bus, or private auto and shall be coordinated by the broker to the greatest extent possible.
(b) Escorts or attendants shall be individuals whose presence is required to assist a recipient during transport.

(3)(a) The broker shall ensure that an escort accompanies all Certificate Type 07 recipients.
(b) One (1) escort only shall be required for each recipient.
(c) A family member may serve as an escort.
(d) One (1) escort may serve several recipients if the recipients are grouped and have the same destination.
(e) Escorts shall not be charged a fare.

Section 12. Standards for Patients. (1) Patients may be coordinated with the general public population for transportation services.
(2)(a) Patients shall give pertinent information needed to the broker (broker's dispatcher), including a request for an [such as] escort required or special needs.
(b) If the recipient is under the TANF Program, the recipient shall convey to the broker the number of children to be transported.
(3) Transportation to childcare shall not be provided under nonemergency medical transportation unless the child is an eligible recipient and in need of covered medical service.
(4) Recipients shall not be taken on a trip under the influence of alcohol or illegal drugs.
(5) Recipients shall be ready within fifteen (15) minutes before scheduled pickup.
(6) Except for medical necessity, recipients shall abide by signs in the vehicle, including [such as] no food or drink [unless medically necessary].
(7) Recipients shall abide by the non-smoking requirement and observe safety rules.

(8) Recipients shall abide by applicable safety seat belt [beef] administrative regulations.
(9) Recipients shall not hold children in laps.
(10) Recipients shall call seventy-two (72) hours in advance for the transport unless it is urgent care or verified by a licensed medical provider request in accordance with Section 10(7) (H) of this administrative regulation.

(11) Recipients shall cancel the trip as soon as possible, but no less than twenty-four (24) hours in advance.
(12) Recipients that engage in violent, seriously disruptive or illegal contact may lose their transportation privileges. Privileges may [shall] be removed with approval from the cabinet and applicable state agency.
(13) If a recipient poses an immediate danger to the driver or other passengers, the driver shall call for emergency assistance.
(14) Recipients shall have the right to call a broker or the cabinet’s toll-free phone lines to lodge a complaint.
(15) Failure to abide by subsections (3) through (13) (H) of this section shall be cause for trip denial pursuant to Section 14 of this administrative regulation.

Section 13. Education Guidelines. Each broker shall educate interested persons in the delivery area regarding:

(1) Scheduling procedures contained in Section 10 of this administrative regulation;
(2) Rates for each service type;
(3) Recipient information as required in Section 10(5) of this administrative regulation;
(4) Pickup and delivery standards as provided for in Sections 8 and 12 of this administrative regulation;
(5) Denial of service as provided for in Section 14 of this administrative regulation;
(6) Permissibility of escorts and attendants, as provided for in this administrative regulation and 907 KAR 1:061;
(7) Procedures for governing urgent care provided for in Section 10 of this administrative regulation;
(8) Standards for driver conduct as provided for in Section 8 of this administrative regulation;
(9) Standards for passengers as provided for in Section 12 of this administrative regulation; and
(10) Complaint process as provided for in Section 14 of this administrative regulation.
Section 14, Program Coordinators. (1) The cabinet shall employ a pool of program coordinators as required by KRS 281.672 [2000 Ky. Acts ch. 346; sec. 1].
(a) These employees shall be responsible for complaint resolution regarding recipients, subcontractors, and brokers.
(b) These employees shall work with other state agencies to resolve complaints.
(2) Issues of eligibility that result in the recipient being denied transportation shall be investigated by the program coordinators.
(3)(a) Eligibility issues shall be attempted to be resolved immediately.
(b) If eligibility cannot be resolved immediately, the recipient shall continue to receive transportation until the program coordinator:
1. Resolves the question of the person's eligibility; and
2. Verifies to the broker that the person is actually ineligible to receive transportation services.
(4) The cabinet shall inform the recipient, in writing, of a denial of transportation services.
(b) The denial letter shall include information about recipients' rights, including appeals and representation.
(5)(a) The Department for Community Based Services shall advise each recipient, in writing, of the availability of the program coordinators and the manner in which they may be contacted.
(b) The recipient may contact the program coordinator regarding complaints or questions about the services provided.

Section 15, [Section 12: Education: (1) The broker shall develop and submit to the cabinet for approval its policies relating to denial of services and procedures to the Federal Transit Administration (FTA). The cabinet shall submit to the cabinet for approval educational material developed by the broker.
(2) Education packets developed by the cabinet shall include:
(a) Regional information on scheduling transportation services;
(b) Including including normal hours of service;
(c) Scheduling procedures, including weekends and holidays;
(d) Rules for the general public transportation;
(e) Information on what recipients are required to submit to the cabinet;
(f) Types of eligible transportation, including pickup and delivery standards and reasons service may be denied;
(g) Permissibility of escorts and attendants;
(h) Procedures governing requests for urgent care and immediate TANF transportation;
(i) Standards for driver and passenger conduct and
(ii) Written instructions governing the complaint process and how to lodge a complaint against a subcontractor, a broker, or a recipient;

Section 15a, Cabinet Performance Monitoring and Oversight. (1) The cabinet shall be satisfied as to the operational readiness of the broker. The broker shall demonstrate operational readiness in the following areas:
(a) Hours of service and operation;
(b) Scheduling procedures;
(c) Pickup and delivery standards;
(d) Urgent care and immediate TANF transportation;
(e) Driver conduct and driver qualification and training;
(f) Passenger requirements;
(g) Vehicle requirements, inspections and vehicle inventory;
(h) Back-up service;
(i) Appeals and complaint procedures;
(j) Telephone systems and reporting procedures, including TTY

(k) Computer and technological capabilities;
(l) Driver manifest form procedures submittal and receipt;
(m) Roles and job descriptions of staff;
(n) Educational and orientation procedures; and
(o) Develop a cabinet approved operational procedures manual for each region.
(2) Each region broker shall set up toll free lines giving the general public information about the availability of services. The cabinet shall have complaint-tracking software identical to each broker. The cabinet shall provide this software to each broker.
(3)(a) The broker shall make himself/herself available for visits by the cabinet on a periodic basis to assess operations, performance, and discuss service issues.
(b) At a minimum, one (1) meeting shall consist of a comprehensive compliance review.
(c) The brokers shall also be available for periodic conference calls with the cabinet (Office of Transportation Delivery) to discuss issues, policy and procedures.
(4)(a) Drivers performing under the human service delivery network shall be subject to random drug and alcohol testing to be administered by the cabinet.
(b) New safety-sensitive employees of transportation providers shall be required to pass a preemployment drug test.
(c) All providers shall develop a drug and alcohol policy.
(d) Brokers shall submit monthly testing activities.
(5)(a) Each broker shall submit a monthly basis information on each one (1) way trip performed during a month in the broker's region to the cabinet (Office of Transportation Delivery).
(b) All broker and contractor trips shall be reported and the dollar amount paid for each one (1) trip.
(c) This information shall be reported in a computer ACCESS format utilizing the same field formats statewide.
(6)(a) The cabinet (Office of Transportation Delivery) shall compile a monthly report containing operating information on each program operated by the brokers, including public transportation, dedicating fleet, miles, hours, fuel, revenues and expenses.
(b) The statistics shall be used for analysis and reporting to other state transportation agencies and to the Federal Transit Administration (FTA). The cabinet shall issue a standard monthly summary report to each broker.
(7) The broker shall submit line item invoice forms each month to the cabinet with the request for reimbursement and detail current month's expenses broken out by line item, including [such as] salaries, subpayments, maintenance, and fuel.
(a) The broker, at its own expense, shall have an independent audit performed for the past fiscal year.
(b) This audit shall be conducted in accordance with federal and state law, and be delivered to the cabinet upon completion.
(8)(a) Formalized program integrity plans shall be submitted to the cabinet which define the broker's program for identifying and deterring any suspected fraud or abuse activities within the human service transportation delivery program.
(b) The cabinet shall issue a statewide program integrity plan format for all brokers.
(10)(a) Each [The] broker shall develop and maintain [submit] a quality assurance plan. The plan shall address [to the cabinet which describes] the following:
1. (a) The scheduling and delivery of transportation services;
and
2. (b) The broker's methodology for the identification and correction of problems relating to the scheduling and delivery of transportation services; and
3. (c) Subcontractor payment efficiency.
(b) [End Note]: (End) The cabinet may require the broker to compile and provide to the cabinet additional reports which further track the broker's performance.
(11)(a) Each broker shall have a disaster recovery plan.
(b) The broker shall not transport in unsafe conditions.
(c) In [such] emergencies, the broker shall contact the National Guard or other emergency units to assist in the transport of dialysis clients or urgent care.
(d) The broker shall operate on all routes or highways that are deemed safe, thereby offering limited services during inclement weather.

Section 16, [14:] Right to Choose Transportation Provider. (1) Persons participating in the human service transportation delivery program and designated a level of eligibility under a Certificate Type 07 or 08 shall be assured the freedom of personal choice in selecting an eligible provider, which may include the broker within the delivery area in accordance with KRS 281.874(1) [2000 Ky. Acts ch. 346].
(2) The broker shall schedule the trip with a participating provider if the recipient does not express a preference.
(b) A person expressing a personal preference under this section shall contact the broker in accordance with KRS 281.874(2) [2000 Ky. Acts ch. 346], to arrange transportation services, even if the person is requesting an eligible subcontractor to provide the services.

(3)(a) In accordance with KRS 281.874(2), the broker may select himself or herself if that broker also provides [2000 Ky. Acts ch. 346]; the broker may select themselves if they also provide [broker may select himself or herself if the broker also provides] transportation services.

(b) [Conf] However, the broker shall establish a scheduling and reservation system of trip distribution approved by the cabinet.

(c) [Conf] If the recipient allows the broker to choose a provider, the criteria for trip distribution shall include, in order of priority:

1. [Conf] Coordination;
2. [Conf] Cost efficiencies; and
3. [Conf] If the first two (2) criteria are not met, the broker shall rotate 07 and 08 trips among providers, including the broker.

(4) The broker and transportation provider shall evaluate routes presently utilized by the eligible recipients.

(b) If the broker determines that a route is inefficient, the broker shall elect a more efficient route.

Transportation Cabinet shall resolve any disputes regarding choice of transportation provider.

Section 17. [15] Cabinet Responsibilities. (1) Pursuant to KRS Chapter 45A, the Transportation Cabinet shall select and contract with a transportation broker in each region established [set forth in] in this administrative regulation.

(a) The cabinet shall establish provider rates for each certificate type for each human service transportation delivery area.

(b) The rates shall be uniform for the same certificate type for all providers, including the broker in each delivery area.

(c) The following factors shall be considered in determining the rates:

1. [Conf] Geographical terrain;
2. [Conf] Trip distance;
3. [Conf] Recipient population;
4. [Conf] Availability of medical and employment facilities;
5. [Conf] Labor and economic factors; and
6. [Conf] Utilization of services.

(3) A forty-five (45) day notice shall be given to all brokers by the cabinet prior to any changes made to the subcontractor rates.

Section 18. [16] Safety and Accountability. (1) The broker and subcontractors shall maintain all records for five (5) years.

(2) All broker employees and employees of the subcontractors shall sign confidentiality statements regarding access to and disclosure of confidential information or records.

(3) Collection and retention of records to be maintained by each broker and subcontractor pertaining to human service transportation delivery shall, at a minimum, include:

(a) Encounter data;
(b) Complaint tracking;
(c) Monthly summary reports;
(d) Trip invoices;
(e) Phone reports;
(f) Subcontractor requests;
(g) Audits;
(h) Line-item budgets; and
(i) Monthly pay document submittals. [but not be limited to] encounter data, complaint tracking, monthly summary reports, trip invoices, phone reports, subcontractor requests, audits, line-item budgets or monthly pay document submittals.

(4) Collection and retention of encounter data on each trip shall be made by the broker, if the broker provides transportation services, and by each subcontractor.

(b) Failure of a broker to record all data and trip requirements by the cabinet shall be grounds for the cabinet to terminate the broker's contract.

(6) Each transportation broker/provider and subcontractor subject to the provisions of 601 KAR 1:005 shall comply with the provisions of that administrative regulation.

(7) Each transportation broker/provider and subcontractor not subject to the provisions of 601 KAR 1:005 shall comply with the provisions of the following federal regulations:

(a) 49 CFR 653, "Prevention of Prohibited Drug Use in Transit Operations," effective October 1, 1999; and

(c) (a) Each transportation broker/provider and subcontractor, who operates a motor vehicle which is not subject to the provisions of 601 KAR 1:005, shall maintain each of the vehicles in a safe operating condition.

(b) Each motor vehicle being operated pursuant to the provisions of this administrative regulation, and which is not subject to the provisions of 601 KAR 1:005, shall be inspected on an annual basis by an automotive technician who has an Automotive Service Excellence (ASE) Certification.

(c) Prior to being operated pursuant to this administrative regulation, the transportation broker/provider shall have proof that the motor vehicle has passed a safety inspection by an automotive technician who has an ASE certification.

Section 19. Adoption Without Change. [17] Incorporation by Reference. [1] The following federal regulations are adopted without change [incorporated in this administrative regulation]:

(a) 49 CFR 37, "Transportation Services for Individuals With Disabilities (ADA)," effective October 1, 1999;

(b) 49 CFR 38, "Americans With Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles," effective October 1, 1999;

(c) 49 CFR 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Program," effective October 1, 1999;

(d) 49 CFR 653, "Prevention of Prohibited Drug Use in Transit Operations," effective October 1, 1999; and


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Section 2: Human Service Transportation Regions. The Transportation Cabinet shall divide the state into sixteen (16) human service transportation regions. The regions shall consist of the following counties:

(a) Region 1:
(b) Ballard;
(c) Calloway;
(d) Carrolle;
(e) Fulton;
(f) Graves;
(f) Hickman;
(g) Marshall; and
(h) McCreary;
(2) Region 2:
(a) Caldwell;
(b) Christian;
(c) Crittenden;
(d) Hopkins;
(e) Livingston;
(f) Lyon;
(g) Muhlenberg;
(h) Todd; and
(i) Trigg;
(3) Region 3:
(a) Daviess;
(b) Hancock;
(c) Henderson;
(d) McLean;
(e) Ohio;
(f) Union; and
(g) Webster;
(4) Region 4:
(a) Brackenridge;
(b) Grayson;
(c) Hardin;
(d) Larue;
(e) Marion;
(f) Meade; and
(g) Nelson;
(5) Region 5:
(a) Adair;
(b) Allen;
(c) Barren;
(d) Butler;
(e) Edmonson;
(f) Green;
(g) Hart;
(h) Logan;
(i) Magoffin;
(10) Region 10:
(f) McLean;
(g) Menifee;
(h) Morgan; and
(i) Warren.
(11) Region 11:
(a) Breathitt;
(b) Clay;
(c) Harlan;
(d) Jackson;
(e) Johnson;
(f) Lee;
(g) Leslie;
(h) Letcher;
(i) Magoffin;
(14) Region 14:
(a) Floyd;
(b) Johnson;
(c) Magoffin;
(d) Martin; and
(e) Pike.
(15) Region 15:
(a) Bath;
(b) Boyd;
(c) Carter;
(d) Elliott;
(e) Greenup;
(f) Lawrence;
(g) Menifee;
(h) Morgan; and
(i) Warren.
(16) Region 16:
(a) Bracken;
(b) Fleming;
(c) Lewis;
(d) Mason; and
(e) Robertson.

Section 3—Service Programs: (f) Human services related transportation delivery shall be made available to each eligible participant in the following program groupings:

(a) Nonemergency medical transportation—pursuant to KRS Chapter 205 and 907-KAR 3665, excluding nonemergency ambulance stretcher transportation;

(b) Mental health; mental retardation; development disabilities; or substance abuse services—pursuant to KRS Chapters 202A, 202B, 210; or 645;

(c) Kentucky Works—Program—pursuant to KRS Chapters 194 or 195 and 604-KAR 2618;

(d) Aging pursuant to KRS Chapters 205, 209, 216, or 273;

(e) Vocational—rehabilitation—pursuant to KRS Chapters 151B or 157; and

(f) Vocational—rehabilitation for the blind—pursuant to KRS Chapter 151B or 163.

(2) The state government agency responsible for implementing
Section 6—Program Administration Contracts. (1) Each funding cabinet shall enter into a program administration contract with the Transportation Cabinet:

(a) A program administration contract shall set forth the following provisions:

(b) The address of each program on the list; and (c) The program for which each program on the list is eligible; and

(d) The administrative regulation setting forth the human service transportation requirements of the program;

(2) In order to deal with this program in an orderly manner and so as not to overwhelm the administrative functions of the transportation provider/brokers and the participating cabinet, the Transportation Cabinet may phase in the implementation of this administrative regulation by region or program;

(3) Right to Choose: (a) Brokers shall provide the right to choose any participating provider in the regional network to eligible persons; Eligible persons are those individuals who are nonambulatory or ambulatory disoriented and are currently in the Medicaids Supports for Community Living (SCL) Waiver Program;

(b) If the eligible recipient's first choice is unavailable, the recipient shall have the opportunity to select a second choice from the participating providers in the region;

(c) The broker shall schedule the trip with a participating provider if the recipient does not express a preference. (5) The broker and transportation provider shall evaluate routes presently utilized by the eligible recipients; If the broker determines that a route is insufficient under the Coordinated Human Service Transportation Delivery Network Plan; the broker shall offer a more efficient route which meets the approval of the affected eligible recipient;

(6) The Transportation Cabinet shall resolve any disputes regarding eligible recipient's routes and provider choices.

Section 7—Safety and Accountability. (1) Each transportation broker/provider and subcontractor shall comply with the safety and operational provisions of the Transportation Cabinet's "Kentucky Coordinated Human Service Transportation Delivery Network Plan."

(2) The following federal regulations are adopted as part of this administrative regulation and shall govern each transportation broker/provider and subcontractor:

(a) 49 CFR 40, "Procedures for Transportation—Workplace Drug and Alcohol Testing Programs," effective October 1, 1997;

(b) 49 CFR 97, "Transportation Services for Individuals with Disabilities (ADA)," effective October 1, 1997;

(c) 49 CFR 98, "America's With Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles," effective October 1, 1997;

(3) Each transportation broker/provider and subcontractor subject to the provisions of 49 CFR 10005 shall comply with the provisions of the administrative regulation;

(4) Each transportation broker/provider and subcontractor subject to the provisions of 49 CFR 10005 shall comply with the provisions of the following federal regulations:

(a) 49 CFR 653, "Prevention of Prohibited Drug Use in Transit Operations," effective October 1, 1997; and


(5) (a) Each transportation broker/provider and subcontractor who operates a motor vehicle which is not subject to the provisions of 49 CFR 10005 shall maintain each of the vehicles in a safe operating condition;

(b) Each motor vehicle being operated pursuant to the provisions of this administrative regulation and which is not subject to the provisions of 49 CFR 10005 shall be inspected on an annual basis by an automotive technician who has an automotive service excellence (ASE) certification;

(c) Prior to being operated pursuant to this administrative regulation, the transportation broker/provider shall have proof that the motor vehicle has passed a safety inspection by an automotive technician who has an ASE certification.

Section 8—Operating Authority. Except for a volunteer provider, each transportation provider shall have operating authority issued by the Transportation Cabinet pursuant to KRS Chapter 261 or 96A.

Section 9—Adoption and Incorporation by Reference. (1) The Kentucky Transportation Cabinet's "Kentucky Coordinated Human Service Transportation Delivery Network Plan," as effective March 1998, is hereby incorporated by reference as a part of this administrative regulation;

(2) The following federal regulations are adopted in this administrative regulation:

(a) 49 CFR 653, "Prevention of Prohibited Drug Use in Transit Operations," effective October 1, 1997;

(b) 49 CFR 654, "Prevention of Alcohol Misuse in Transit Operations," effective October 1, 1997;

(c) 49 CFR 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," effective October 1, 1997;

(d) 49 CFR 97, "Transportation Services for Individuals with Disabilities (ADA)," effective October 1, 1997; and

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(5) The initial professional certificate for director of special education shall be issued for a duration period of five (5) years (except as provided in Section 4[1] [24] or 5 of this administrative regulation) upon the successful completion of a Level I program approved by the Education Professional Standards Board pursuant to 704 KAR 20:696 and shall [may] be renewed subsequently for [subsequent] five (5) year periods. The first renewal shall require the completion of a Level II program approved by the Education Professional Standards Board pursuant to 704 KAR 20:696. Each five (5) year renewal thereafter shall require the [based upon] completion [by September 1 of the year of expiration] of two (2) years of [successful] experience as a director of special education or three (3) semester hours of additional graduate credit or the equivalent related to the position of the director of special education, or forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program provided in KRS 156.101.

(6) If a lapse in certification occurs for lack of completion of the Level II preparation, the certificate may be reissued for a five (5) year period upon successful completion of the Level II preparation, but for the lack of the renewal requirements, the certificate may be reissued after the completion of an additional six (6) semester hours of graduate study or the equivalent appropriate to the program.

(7) Graduate level credit earned in the Level I and Level II preparation programs identified in this section shall be eligible for consideration of Rank I classification pursuant to 704 KAR 20:015. "Plan I" or "Plan II."

(8) Any person whose job duties, regardless of job title, include supervising, directing, administering, or coordinating special education programs for the 1988-89 academic year without an appropriate certificate under this administrative regulation may be approved for 1988-89. Such may be extended for 1991-92 upon completion by September 1, 1991, of forty-two (42) participant hours of instruction relevant to the role of the director of special education as determined by the Kentucky Department of Education or upon completion of one-half (1/2) of the approved curriculum standards for the professional certificate for director of special education. The program shall continue for the same duration period as the basic teaching certificate upon completion of another forty-two (42) participant hours to be completed by September 1, 1993, or completion of the approved curriculum standards for the professional certificate for director of special education. The forty-two (42) participant hours may also satisfy the requirement for the Effective Instructional Leadership Act, KRS 156.101.

Section 3. (1) [4][f] All persons whose job description includes supervising, directing, administering, or coordinating special education programs, at the district-wide level—other than those approved under the provisions of subsection (b) of this Section 5 of this administrative regulation—shall be required to hold one (1) of the following:
(a) The endorsement for director of special education;
(b) The professional certificate for director of special education;
(c) The endorsement for supervisor of special education;
(d) The endorsement for teacher consultant for special education;
or
(e) A certificate valid for supervisor of instruction for persons serving in such positions on July 14, 1992, as provided by KRS 157.250;
or
(f) A valid certificate possessing the code ADSE for approval of director of special education.

(2) Persons who hold a certificate valid for supervisor of instruction and were [are] appointed after July 14, 1992, and until September 1, 1996, shall [must] comply with the requirements of Section 5 [4] [5] of this administrative regulation

Section 4. [2][1] (1) If a qualified applicant [person with qualifications identified in Section 1 of this administrative regulation] is not available for the position of director of special education the superintendent on behalf of the local board of education may request a professional certificate for director of special education for a two (2) year period for an applicant who meets the following qualifications:
(a) A valid Kentucky certificate for teachers of exceptional children;
(b) Rank II certification [A master's degree];
(c) Three (3) years of full-time experience teaching exceptional

JAMES C. CODELL, III, Secretary
GERI GRIGSBY, Executive Director
APPROVED BY AGENCY: October 13, 2000
FILED WITH LRC: October 13, 2000 at noon

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, November 14, 2000)

704 KAR 20:198. Director of special education.

RELATES TO: KRS 157.250, 161.020, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes (1) the director of special education certificate, (2) the program approval standards for the preparation-certification program for directors of special education, and (3) identifies acceptable certificates for individuals who may serve in a position which supervises, directs, administers, or coordinates special education programs.

Section 1. Definitions. (1) "Level I" means the standards-based program of studies designed for minimal preparation to serve in the position of director of special education.
(2) "Level II" means the standards-based program of studies to attain the first five (5) year renewal of the certificate for the position of director of special education.
(3) [Definition: "Qualified applicant" means an applicant who holds the appropriate certificate as a director of special education unless the superintendent of the employing school district has documented evidence that the applicant is unsuitable for appointment.

Section 2. (1) The professional certificate for director of special education shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant who has satisfied the prerequisites and who has completed an approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in 704 KAR 20:696 the Kentucky Standards for the Preparation-Certification of Professional School Personnel and set forth in either this section or Section 4 or 5 of this administrative regulation.
(2) As prerequisites for the Level I program of preparation for the initial professional certificate for director of special education, the candidate shall:
(a) Have been admitted to a preparation program approved by the Education Professional Standards Board pursuant to 704 KAR 20:696;
(b) Have completed three (3) years of full-time experience as a teacher or school psychologist with a minimum of one (1) year as a teacher of exceptional children or school psychologist;
(c) Have attained Rank II certification; and
(d) Qualify for a Kentucky teaching certificate or school psychologist certificate.
(3) If a candidate's Rank II certification is not in the educational leadership field, a teacher education institution may require additional coursework in this field as part of the Level I preparation.
(4) Application for the professional certificate for director of special education shall be made on Form TC-1.

(5) The initial professional certificate for director of special education shall be issued for a duration period of five (5) years (except as provided in Section 4[1] [24] or 5 of this administrative regulation) upon the successful completion of a Level I program approved by the Education Professional Standards Board pursuant to 704 KAR 20:696 and shall [may] be renewed subsequently for [subsequent] five (5) year periods. The first renewal shall require the completion of a Level II program approved by the Education Professional Standards Board pursuant to 704 KAR 20:696. Each five (5) year renewal thereafter shall require the [based upon] completion [by September 1 of the year of expiration] of two (2) years of [successful] experience as a director of special education or three (3) semester hours of additional graduate credit or the equivalent related to the position of the director of special education, or forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program provided in KRS 156.101.

(6) If a lapse in certification occurs for lack of completion of the Level II preparation, the certificate may be reissued for a five (5) year period upon successful completion of the Level II preparation, but for the lack of the renewal requirements, the certificate may be reissued after the completion of an additional six (6) semester hours of graduate study or the equivalent appropriate to the program.

(7) Graduate level credit earned in the Level I and Level II preparation programs identified in this section shall be eligible for consideration of Rank I classification pursuant to 704 KAR 20:015. "Plan I" or "Plan II."

(8) Any person whose job duties, regardless of job title, include supervising, directing, administering, or coordinating special education programs for the 1988-89 academic year without an appropriate certificate under this administrative regulation may be approved for 1988-89. Such may be extended for 1991-92 upon completion by September 1, 1991, of forty-two (42) participant hours of instruction relevant to the role of the director of special education as determined by the Kentucky Department of Education or upon completion of one-half (1/2) of the approved curriculum standards for the professional certificate for director of special education. The program shall continue for the same duration period as the basic teaching certificate upon completion of another forty-two (42) participant hours to be completed by September 1, 1993, or completion of the approved curriculum standards for the professional certificate for director of special education. The forty-two (42) participant hours may also satisfy the requirement for the Effective Instructional Leadership Act, KRS 156.101.

Section 3. (1) [4][f] All persons whose job description includes supervising, directing, administering, or coordinating special education programs, at the district-wide level—other than those approved under the provisions of subsection (b) of this Section 5 of this administrative regulation—shall be required to hold one (1) of the following:
(a) The endorsement for director of special education;
(b) The professional certificate for director of special education;
(c) The endorsement for supervisor of special education;
(d) The endorsement for teacher consultant for special education;
or
(e) A certificate valid for supervisor of instruction for persons serving in such positions on July 14, 1992, as provided by KRS 157.250;
or
(f) A valid certificate possessing the code ADSE for approval of director of special education.

(2) Persons who hold a certificate valid for supervisor of instruction and were [are] appointed after July 14, 1992, and until September 1, 1996, shall [must] comply with the requirements of Section 5 [4] [5] of this administrative regulation

Section 4. [2][1] (1) If a qualified applicant [person with qualifications identified in Section 1 of this administrative regulation] is not available for the position of director of special education the superintendent on behalf of the local board of education may request a professional certificate for director of special education for a two (2) year period for an applicant who meets the following qualifications:
(a) A valid Kentucky certificate for teachers of exceptional children;
(b) Rank II certification [A master's degree];
(c) Three (3) years of full-time experience teaching exceptional
Section 5. Persons employed after July 14, 1992, and until September 1, 1996, by a local school district in an assignment which includes supervising, directing, administering, or coordinating special education programs at the districtwide level, and who hold a valid certificate for supervision of instruction shall be issued a one (1) year Professional Certificate for Director of Special Education under the following conditions:

(1) The individual shall provide evidence of being enrolled in a program of preparation approved by the Education Professional Standards Board pursuant to 704 KAR 20:696 [which shall include the program outlined in Section 4 of this administrative regulation] and in addition, coursework which includes special education instructional methods, materials and programs including preschool special education.

(2) The one (1) year Professional Certificate for Director of Special Education may be renewed for additional one (1) year periods on completion by September 1 of the year of expiration of nine (9) semester hours selected from subsection (1) of this section.

(3) On completion of the program of preparation outlined in subsection (1) of this section the certificate shall be extended for the remainder of the usual five (5) year duration period and renewed in keeping with Section 2(5) (H2) of this administrative regulation.

Section 6. Any person whose job duties, regardless of job title, include supervising, directing, administering, or coordinating special education programs for the 1996-97 academic year without an appropriate certificate under this administrative regulation may be approved for 1996-97 upon completion by September 1, 1997, of forty-two (42) participant hours of instruction relevant to the role of the director of special education as determined by the Kentucky Department of Education or upon completion of one-half (1/2) of the approved curriculum standards for the professional certificate for director of special education. The approval may be extended for the same duration period as the base teaching certificate upon completion of another forty-two (42) participant hours to be completed by September 1, 1993, or completion of the approved curriculum standards for the professional certificate for director of special education. The forty-two (42) participant hours may also satisfy the requirement for the Effective Instructional Leadership Act, KRS 156:191.

Section 7. A preparation program for the professional certificate for director of special education shall be consistent with the six (6) standards included in "Interstate School Leaders Licensure Consortium Standards for School Leaders" found in 704 KAR 20:710, Section 3, (e) and incorporated by reference.

Section 7. (8) (e) Incorporation by Reference, (1)(a) "Interstate School Leaders Licensure Consortium Standards for School Leaders" is incorporated by reference.

(b) "Form TC-1, rev. 11/99" is incorporated by reference.

(c) "Form TC-28, rev. 08/00" is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair
APPROVED BY AGENCY: August 15, 2000
FILED WITH LRC: August 15, 2000 at noon

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, November 14, 2000)


RELATES TO: KRS 161.020, 161.028, [161.025], 161.030, 161.052

STATUTORY AUTHORITY: KRS 161.028, [161.078], 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028 [161.065] and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation [prescribed by the Kentucky Council on Teacher Education and Certification and] approved by the Education Professional Standards Board [State Board of Education]. KRS 161.052 requires that all persons employed as a teacher for gifted education hold an appropriate certificate endorsement for gifted education. This administrative regulation establishes a preparation-certification program for teachers for gifted education.

Section 1. Definitions. (1) [Definition.] Qualified teacher means a teacher who holds the appropriate certification as a teacher for [of] gifted education unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

(2) "Teacher for gifted education" means a teacher who works:

(a) Directly with identified gifted pupils, in addition to the regularly assigned classroom teacher; or

(b) For at least one-half (1/2) of the regular school day in a
classroom made up only of properly identified gifted students.

Section 2. (1) A certificate endorsement as teacher for gifted education shall be issued in accordance with the pertinent Kentucky statutes and the Education Professional Standards Board (State Board of Education) administrative regulations to an applicant who:
(a) Holds a certificate valid for classroom teaching at the elementary school level, the middle grade level, or the high school level;
(b) Has, has completed at least one (1) year of successful teaching experience;
or
(2) For an individual certified after January 1, 1985, has successfully completed [- For individuals certified since January 1, 1985; this requirement shall [will] be satisfied by successful completion of] the beginning teacher internship; and
(c) Has completed the appropriate program of preparation for the certificate endorsement established in this administrative regulation [herein] at a teacher education institution approved under the standards and procedures included in 704 KAR 20:696 [the Kentucky Standards for the Preparation-Certification of Professional School Personnel, as adopted by 704 KAR 20:005; 7EO 54:0].

(2) The endorsement as teacher for gifted education shall be valid for grades K-12. [-however.] Assignment to a full-time self-contained gifted education class shall be restricted to the level of the base certificate. The endorsement shall have the same duration as the base certificate.

(3) [The teacher for gifted education is defined as a teacher who works directly with identified gifted pupils, in addition to the regularly assigned classroom teacher(s), or for at least one-half (-1/2) of the regular school day in a classroom made up only of properly identified gifted students.]

(4) [All persons employed as teachers for gifted education shall hold an appropriate certificate endorsement for gifted education, except a teacher (with the following exceptions):
(a) Teachers identified in Section 3 of this administrative regulation;
or
(b) Certified [-except that all Teachers having certificates initially issued for a duration period on or before [beginning prior to] July 1, 1984, in accordance with KRS 161.025, or subsequent renewal thereof, shall remain eligible thereafter for assignment as teachers for gifted education, for the grade levels of the base certificate; provided any such assignment was valid under the original certificate at the time it was issued.]]

Section 3. (1) If a qualified teacher is not available for the position of teacher for [gifted education as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a probationary endorsement for teaching gifted education for a teacher who [a teacher of gifted education who meets the following qualifications]:
(a) Has a bachelor's degree;
(b) Has a valid Kentucky teaching certificate;
(c) Has been admitted [Admission to the preparation program for the endorsement for teachers for] gifted education; and
(d) Is enrolled in a program of study related to the education profession.

(2) The request for the probationary endorsement shall be submitted on Form TC-GP to the Education Professional Standards Board for each teacher for gifted education [teacher] requiring the probationary endorsement.

(3) (a) The probationary endorsement for teachers for [gifted education shall be valid for a period of two (2) years from the initial request.
(b) A teacher receiving this probationary endorsement shall complete the required curriculum for recommendation for the endorsement for teacher for [gifted education issued under Section 2 of this administrative regulation within the two (2) year validity of the probationary endorsement.
(c) The probationary endorsement shall not be renewed.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Stan-

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dards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair
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EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARS, November 14, 2000)

704 KAR 20:410. Certification for supervisor of instruction; [grades K-12].

RELATES TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for supervisor of instruction at all grade levels [grades K-12].

Section 1. Definitions. (1) "Level I" means the standards-based program of studies designed for minimal preparation to serve in the position of supervisor of instruction.

(2) "Level II" means the standards-based program of studies to attain the first five (5) year renewal of the certificate for the position of supervisor of instruction.

Section 2. (1) The professional certificate for instructional leadership - supervisor of instruction, [grades K-12]; shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in 704 KAR 20:696 [704 KAR 20:005; the Kentucky Standards for the Preparation-Certification of Professional School Personnel].

(2) [The professional certificate for instructional leadership - supervisor of instruction, grades K-12; shall be valid for the position of supervisor of instruction for grades K-12 unless otherwise delimited.]

(3) As prerequisites for the Level I program of preparation for the initial professional certificate for instructional leadership - supervisor of instruction, [grades K-12], the candidate shall:
(a) Have been admitted to a [the] preparation program approved by the Education Professional Standards Board [on the basis of criteria developed by the teacher education institution] pursuant to 704 KAR 20:696 [704 KAR 20:005];
(b) Have completed three (3) years of full-time teaching experience;
(c) Have completed the master's degree; and
(d) Qualify for a Kentucky teaching certificate; a certificate issued for speech and communication disorders shall not satisfy this prerequisite.

(3) Application for the professional certificate for instructional leadership - supervisor of instruction shall be made on Form TC-1.

(4) The initial professional certificate for instructional leadership - supervisor of instruction, [grades K-12]; shall be issued for a duration period of five (5) years upon the successful completion of a Level I program approved by the Education Professional Standards Board pursuant to 704 KAR 20:696, and shall be renewed subsequently for five (5) year periods. The first renewal shall require the completion of a [the twelve (12) semester-hour graduate curriculum identified as the] Level II program approved by the Education Professional Standards Board pursuant to 704 KAR 20:696 [in the curriculum standards]. Each five (5) year renewal thereafter shall require the completion of two (2) years of experience as a supervisor of instruction, or three (3...
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semester hours of additional graduate credit or the equivalent related to the position of supervisor of instruction, or forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

(5) If a lapse in certification occurs for lack of completion of the Level II preparation, the certification may be reissued for a five (5) year period upon successful completion of the Level II preparation, but for lack of the renewal requirements, the certificate may be reissued after the completion of an additional six (6) semester hours of graduate study or the equivalent appropriate to the program.

Section 3, (2) Graduate level credit earned in the Level I and Level II preparation programs identified in Section 1 of this administrative regulation shall be eligible for consideration of Rank I classification pursuant to 704 KAR 20:015, “Plan I” or “Plan II.” (4) A certificate based upon Level II preparation as an early elementary school principal, grades K-4, shall qualify the holder as a supervisor of instruction, grades K-4. The supervision certification shall be valid also for any other sequential combination of the grades K through eight (8) that includes any grade K-4.

(2) A certificate based upon Level II preparation as a middle grade school principal, grades 5-8, shall qualify the holder as a supervisor of instruction, grades 5-8. The supervision certification shall be valid also for any other sequential combination of the grades K through eight (8) that includes any grade 5-8.

(3) A certificate based upon Level II preparation as a secondary school principal, grades 9-12, shall qualify the holder as a supervisor of instruction, grades 9-12. The supervision certification shall be valid also for any other sequential combination of the grades 5-12 that includes any grade 9-12.

Section 4, (2) A preparation program for the professional certificate for instructional leadership - supervisor of instruction, shall be consistent with the six (6) standards included in “Interstate School Leaders Licensure Consortium Standards for School Leaders” found in 704 KAR 20:710, Section 3, (2) and incorporated by reference.


(b) “Form TC-1, rev. 11/99” is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Education Professional Standards Board, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair
APPROVED BY AGENCY: August 15, 2000
FILED WITH LRC: August 15, 2000 at noon

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, November 14, 2000)


RELATES TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028(1)(b) requires that a teacher education institution 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 the preparation and certification program for school superintendent.

Section 1. Conditions and Prerequisites. (1) The professional certificate for instructional leadership - school superintendent shall be issued to an applicant who has completed:

(a) An approved program of preparation, as required by this administrative regulation and pursuant to 704 KAR 20:696; and
(b) The appropriate requirements for certification, as established in 704 KAR Chapter 20.

(2) At least two (2) years of experience in a position of school principal, supervisor of instruction, guidance counselor, director of pupil personnel, director of special education, school business administrator, local district coordinator of vocational education, or a coordinator, administrator, or supervisor of district-wide services. Other administrative experience may be substituted for this requirement with the approval of the Education Professional Standards Board.

(3) Prerequisites for the program of preparation for the professional certificate for instructional leadership - school superintendent shall be valid for the position of school superintendent and assistant superintendent.

(a) Qualifications for a Kentucky teaching certificate;
(b) Admission to the preparation program on the basis of criteria developed by the teacher education institution pursuant to 704 KAR 20:696;
(c) Completion of a master’s degree;
(d) Except as provided in subparagraph (2) of this paragraph, completion of the Levels I and II preparation and certification for the position of school principal, or supervisor of instruction; or
(e) For a candidate who completed preparation for principal prior to 1988, completion of the assessments for administration; and
(f) Completion of at least five (5) years of experience as follows: at least 140 days per year; and
2. At least two (2) years of additional experience in a position of school principal, supervisor of instruction, guidance counselor, director of pupil personnel, director of special education, school business administrator, local district coordinator of vocational education, or a coordinator, administrator, or supervisor of district-wide services. Other administrative experience may be substituted for this requirement with the approval of the Education Professional Standards Board.

Section 2. A preparation program for the professional certificate for instructional leadership - school superintendent shall be consistent with the six (6) standards included in “Interstate School Leaders Licensure Consortium Standards for School Leaders” found in 704 KAR 20:710, Section 3, (6) and incorporated by reference. [Kentucky Administrator-Standard I: The administrator is the instructional leader who guides, facilitates, and supports the curriculum, instruction, and assessment; (6) Administrator-Standard II- The administrator practices positive, promotional, and proactive communication strategies (oral and written) for effective parent, community, and school involvement to improve the learning environment for all students; and
(3) Administrator-Standard III- The administrator is the organizational leader and manager who acts with legal and ethical guidelines to accomplish educational purposes.]

Section 3. Issuance and Renewal. (1) The initial professional certificate for instructional leadership - school superintendent shall be issued for five (5) years to a candidate who has completed an approved program of preparation for superintendent at the postmaster’s level. Application shall be made on Form TC-1.

(2) Each five (5) year renewal shall require:
(a) The completion of two (2) years of experience as a school superintendent or assistant superintendent;
(b) Three (3) semester hours of additional graduate credit or the equivalent related to the position of school superintendent; or
(c) Forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

(3) If a lapse in certification occurs for lack of the renewal requirements, the certificate shall be reissued for a five (5) year period after the completion of an additional six (6) semester hours of graduate
Section 4. Implementation Dates. (1) The provisions for the issuance of the certification for school superintendent shall apply to a candidate admitted to a program of preparation for school superintendent beginning September 1, 1998.

(a) A candidate admitted prior to September 1, 1998, to an approved preparation program for school superintendent shall complete the program by September 1, 2000.

(b) A candidate who fails to complete an approved preparation program for school superintendent [Identified in Section 3] by September 1, 2000, and who does not apply for certification by May 1, 2001, shall be required to qualify for the new certificate identified in this administrative regulation.

(3) Colleges and universities shall take adequate steps to inform a candidate in these programs regarding the implementation dates established in this section.

Section 5. Incorporation by Reference. (1) "Interstate School Leaders Licensure Consortium Standards for School Leaders" is incorporated by reference.

(b) "Form TC-1, rev. 11/99" is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair
APPROV'D BY AGENCY: August 15, 2000
FILED WITH LRC: August 15, 2000 at noon

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, November 14, 2000)


Ky-Acts ch. 325

STATUTORY AUTHORITY: KRS 161.020 [156:079], 161.030, 161.033 [3399 Ky-Acts ch. 325]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028 [161.025], and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation and other requirements prescribed by the Education Professional Standards Board. KRS 161.030 requires that a Kentucky Council on Teacher Education and Certification and approved by the State Board of Education[; furthermore, the] teacher education institution [institutions are required to] be approved for offering the preparation program [programs] corresponding to a particular certificate [certificates] on the basis of standards and procedures [recommended by the Council and established] [approved] by the Education Professional Standards Board [State Board]. KRS 161.053 requires the Education Professional Standards Board to promulgate administrative regulations to establish requirements relating to certification of teachers of exceptional children/communication disorders. This administrative regulation establishes the certificates for teachers of exceptional children/communication disorders and [an appropriate certificate and relates to] the corresponding standards and procedures for program approval [as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel].

Section 1. A student who meets the deadlines established in subsection (5) of this section shall meet the requirements established in this section for a standard certificate.

(1) The standard certificate for teachers of exceptional children and youth - communication disorders shall be issued in accordance with the pertinent Kentucky statutes and Education Professional Stan-

dards Board [State Board of Education] administrative regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in 704 KAR 20:690, [the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:690, TES 1994-01] 704 KAR 20:305, and 704 KAR 20:690 [and 704 KAR 20:645].

(b) Upon successful completion of the beginning teacher internship, the certificate shall be extended for the remainder of the five (5) year period and renewed for subsequent five (5) year periods upon completion by September 1 of the year of expiration of:

a. Three (3) years of successful experience as a teacher of communication disorders; or

b. [or] Upon completion by September 1 of the year of expiration eff of at least six (6) semester hours of credit or the equivalent in PSEDUs or CEUs, as defined in 704 KAR 20:020.

(3) The standard certificate for teachers of exceptional children and youth - communication disorders shall be valid at all age levels for the instruction of exceptional children and youth with communication disorders.

(4) The standard certificate for teachers of exceptional children and youth - communication disorders shall [only] be issued to an applicant who has completed a master's degree in communication or [i] speech language pathology.

(5) A student enrolled in an approved preparation program leading to the standard certificate for teachers of exceptional children and youth - communication disorders shall complete all required coursework by September 1, 2000, and apply for certification by December 31, 2000. A student failing to meet these deadlines shall complete the preparation and certification requirements established in Section 2 of this administrative regulation.

Section 2. A student who does not meet the deadlines established in Section 1(5) of this administrative regulation shall meet the requirements established in this section for a professional certificate.

(1) The professional certificate for teachers of exceptional children/communication disorders shall be issued in accordance with the pertinent Kentucky statutes and Education Professional Standards Board administrative regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in 704 KAR 20:690.

(2) The professional certificate for teachers of exceptional children/communication disorders shall be issued in accordance with the testing and internship provisions of KRS 161.030, 704 KAR 20:305, and 704 KAR 20:690. Upon successful completion of the beginning teacher internship, the certificate shall be extended for the remainder of the five (5) year period and shall be renewed for subsequent five (5) year periods upon completion of the renewal requirements established in 704 KAR 20:050.

(3) The professional certificate for teachers of exceptional children/communication disorders shall be valid at all age levels for the instruction of exceptional children with communication disorders.

(4) The professional certificate for teachers of exceptional children/communication disorders shall [only] be issued to an applicant who has completed a master's degree in [communication] speech language pathology.

Section 3. (1) Beginning July 14, 2000, the Education Professional Standards Board shall certify teachers of exceptional children/communication disorders who hold licensure as a speech language pathology assistant issued by the Kentucky Board of Speech Language Pathology and Audiology under KRS Chapter 334A who meet the qualifications established in this section of this administrative regulation.

(2) Applicants who possess a valid license for speech language pathology assistant issued under KRS Chapter 334A who have at
least one (1) year of successful experience in Kentucky's public schools in this position shall be issued the "professional certificate for exceptional children/communication disorders/SLPA only" valid for five (5) years and shall be renewed for subsequent five (5) year periods upon completion of the renewal requirements established in 704 KAR 20-660.

(b) Applicants shall submit Form TC-161 with documentation of postsecondary education, licensure, and experience.

(3)(a) Applicants who possess a valid license for speech language pathology assistant issued under KRS Chapter 334A who do not have successful experience in Kentucky's public schools in this position shall be issued a statement of eligibility valid for five (5) years.

1. The teacher shall complete the Kentucky Teacher Internship Program established in 704 KAR 20-660.

2. Upon successful completion of the beginning teacher internship, the teacher shall be issued a "professional certificate for exceptional children/communication disorders/SLPA only" valid for the remainder of the five (5) year period and shall be renewed for subsequent five (5) year periods upon completion of the renewal requirements established in 704 KAR Chapter 20.

(b) Applicants shall submit Form TC-161 with documentation of postsecondary education and licensure.

(4) Beginning July 1, 2001, an applicant for the "professional certificate for exceptional children/communication disorders/SLPA only" shall successfully complete the required content area assessments established for this certificate in 704 KAR 20-365.

A teacher certified under this section of the administrative regulation shall remain a speech language pathology assistant requiring supervision under KRS Chapter 334A until the teacher:

(a) [these] Completes the master's degree in [communication/][speech language pathology]; and

(b) Gains the professional certificate for exceptional children/communication disorders established in Section 2 of this administrative regulation.

Section 4. Incorporation by Reference. (1) Form TC - 161, 7/2000, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair
APPROVED BY AGENCY: September 15, 2000
FILED WITH LRC: September 15, 2000 at 9 a.m.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, November 14, 2000)

704 KAR 20:540. Professional certificate for directors of pupil personnel and assistants.

RELATES TO: KRS 159.080, 161.020, 161.028, 161.030[, -HB 927-(1996 GA)];

STATUTORY AUTHORITY: KRS 161.028

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification for director [administrator] of pupil personnel services, and establishes the requirements for a probationary certificate when a person holding certificate for director [administrator] of pupil personnel services is not available[, and provides for repeal of 704 KAR 20-100].

Section 1. Definitions. (1) "Level I" means the standards-based program of studies designed for minimal preparation to serve in the position of director of pupil personnel and assistants.

(2) "Level II" means the standards-based program of studies to obtain the first five (5) year renewal of the certificate for the position of pupil personnel and assistants.

(3) [Deleted.] "Qualified applicant" means an applicant who holds the appropriate certification as a director of pupil personnel services unless the superintendent of the employing school district has documented evidence that the applicant is unsuitable for appointment.

Section 2. (1) The professional certificate for director [Administrator] of pupil personnel services shall be issued in accordance with the pertinent Kentucky statutes and this administrative regulation to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in 704 KAR 20-665.

(2) As prerequisites for the Level I program of preparation for the initial professional certificate for director [Administrator] of pupil personnel services, the candidate shall [in lieu of]:

(a) Have been admitted to [Admission to the] preparation program approved by the Education Professional Standards Board pursuant to 704 KAR 20-660 [on the basis of criteria developed by the teacher education institution. Program admission criteria shall include formal recommendations, grade point average, scores on standardized tests; and consideration by an admissions review committee];

(b) Have completed three (3) years of full-time teaching experience;

(c) Have completed the [A] master's degree [as required by 704 KAR 20-920]; and

(d) Qualify for a Kentucky teaching certificate.

(3) Application for the professional certificate for director of pupil personnel services shall be made on Form TC-1.

(4) The initial professional certificate for director [Administrator] of pupil personnel services shall be issued for a duration of five (5) years upon the successful completion of a Level I program approved by the Education Professional Standards Board pursuant to 704 KAR 20-666 and shall be renewed subsequently for five (5) year periods. The first renewal shall require the completion of a Level II program approved by the Education Professional Standards Board pursuant to 704 KAR 20-596. Each five (5) year renewal thereafter shall require the completion of two (2) years of experience as a director [an administrator] of pupil personnel services, or three (3) semester hours of additional graduate credit or the equivalent related to the position of director [administrator] of pupil personnel services, or forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Leadership Training Program provided in KRS 156.101.

(5) If a lapse in certification occurs for lack of completion of the Level II preparation, the certification may be reissued for a five (5) year period upon successful completion of the Level II preparation, but for the lack of the renewal requirements, the certificate may be reissued after the completion of an additional six (6) semester hours of graduate study or the equivalent appropriate to the program.

Section 3. Graduate level credit earned in the Level I and Level II preparation program identified in Section 2 of this administrative regulation shall be eligible for consideration of Rank I classification pursuant to 704 KAR 20-215, "Plan II or Plan III.

[Section 2.-The approved program of preparation for the professional certificate for administrator of pupil personnel services shall consist of a fifteen (15) semester hour graduate program designed to prepare an administrator of pupil personnel services in the following professional standards;]

(1) Performance Standard I: Leadership. The administrator of pupil personnel services guides, facilitates, and supports the removal of barriers to the instructional program.

(2) Performance Standard II: Legal. The administrator of pupil personnel services applies legal concepts, practices, administrative regulations, and resolves compliance issues for school operation.

(3) Performance Standard III: Pupil Accounting. The administrator of pupil personnel services complies with pupil accounting procedures
prescribed by statute and administrative regulations; and

(4) Performance Standard IV: Networking and Related Support Services. The administrator of pupil personnel services identifies and utilizes appropriate school support programs, community agencies, and available resources;

Section 4. (1) If a qualified applicant [person holding certification] for director [administrator] of pupil personnel services is not available as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one-year probationary certificate for a director [an administrator] of pupil personnel services who meets the following qualifications:

(a) A valid Kentucky classroom teaching certificate;
(b) A master's degree [as required by 704 KAR 20-021];
(c) Three (3) years of successful teaching experience;
(d) Admission to the preparation program for the professional certificate for director [administrator] of Pupil Personnel services.

(2) Application for the one (1) year probationary certificate for a director of pupil personnel services shall be made on Form TC-40.

(3) Each annual renewal of the probationary certificate for director [administrator] of pupil personnel services shall require completion of an additional nine (9) semester hours selected from the approved program.

Section 5. A preparation program for the certificate for director of pupil personnel services shall be consistent with the six (6) standards included in "Interstate School Leaders Licensure Consortium Standards for School Leaders" found in 704 KAR 20:710, Section 3, (29) and incorporated by reference.


(b) "Form TC-1, rev. 11/99" is incorporated by reference.

(c) "Form TC-40, rev. 08/00" is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair
APPROVED BY AGENCY: August 15, 2000
FILED WITH LRC: August 15, 2000 at noon

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARES, November 14, 2000)


RELATES TO: KRS 161.028, 161.030, 161.042
STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.042
NECESSITY, FUNCTION AND CONFORMITY: KRS 161.028 requires that a teacher education institution 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. KRS 161.030 requires that a certificate shall be issued to a person who has completed a program approved by the Education Professional Standards Board. KRS 161.042 requires the Education Professional Standards Board to promulgate an administrative regulation relating to student teachers, including the qualifications for supervising teachers. This administrative regulation establishes the standards for admission, placement, and supervision in student teaching. [This is not required by federal law or regulation.]

Section 1. Definition. "Cooperating teacher" or "supervising teacher" means a teacher employed in a school in Kentucky who is contracting with a teacher education institution to supervise a student teacher for the purposes of fulfilling the student teaching requirement of the approved teacher preparation program.

Section 2. Cooperating Teacher Eligibility Requirements. (1) Except as provided in subsection (2) or (3) of this section, the cooperating teacher shall have:

(a) A valid Kentucky teaching certificate for each grade and subject [the grade(s) and subject(s)] taught;
(b) Attained Rank II certification;
(c) At least four (4) years of teaching experience; and
(d) Taught in the present school system at least one (1) year immediately prior to being assigned a student teacher.

(2) If in cases where a cooperating teacher has not attained Rank II certification, this requirement shall [may be waived if the teacher meets the requirements established in KRS 161.042(3) perhaps at least twenty (20) years of teaching experience and has been a cooperating teacher during the past five (5) years].

(3) Teachers assigned to a teaching position on the basis of a probationary or emergency certificate issued by the Education Professional Standards Board under 704 KAR Chapter 20 shall not be eligible for serving as a cooperating teacher.

Section 3. Admission to Student Teaching. In addition to the appropriate sections of the National Council for Accreditation of Teacher Education (NCATE) standards which are incorporated under 704 KAR 20:696, each teacher education institution shall determine minimum standards for admission to student teaching which shall include the procedures established in this section [stated below]. Admission to student teaching shall include a formal application procedure for each teacher candidate.

A record or report from a valid and current medical examination, which shall have included a tuberculosis test, shall be placed on file with the admissions committee.

(2) The teacher candidate shall have achieved the following academic requirements:

(a) An overall academic standing of at least 2.50; and
(b) An academic standing of at least 2.50 in an academic specialty for which the institution shall recommend a certificate.

(3) Prior to and during the student teaching experience, the teacher candidate shall adhere to the Professional Code of Ethics for Kentucky School Personnel established in 704 KAR 20:680.

Section 4. [2] Teacher-Student Ratio. The ratio of student teachers to cooperating teachers shall be one (1) to one (1) [unless circumstances exist as approved by the Education Professional Standards Board, Office of Teacher Education and Certification]. In any event, the ratio shall not exceed five (5) student teachers per cooperating teacher.

Section 5. [9] College Coordinator. (1) The college coordinator shall make a periodic observation of the student teacher in the classroom and shall prepare a written report on each observation and share it with the student teacher.

(2) The observation report shall be filed as a part of the student teacher record and also used as a validation of the supervisory function.

(3) A student teacher shall receive periodic and regular on-site observation and a critique of the actual teaching situation a minimum of four (4) times excluding seminars and workshops.

(4) The college coordinator shall be available to work with the student teacher and personnel in the cooperating school on a problem that may arise relating to the student teaching situation.

Section 6. [4] Professional Experience. (1) In addition to the appropriate NCATE standards incorporated by reference under 704 KAR 20:696, the teacher education institution shall provide an opportunity for the student teacher to assume major responsibility for the full range of teaching duties in a real school situation under the guidance of qualified personnel from the institution of higher education or the cooperating elementary or secondary school.

(2) Each teacher education institution shall provide a full professional semester to include a period of student teaching for a minimum of twelve (12) weeks, full day, or equivalent, within the grade levels corresponding to the student teacher's certification program.

Section 7. Compensation of Cooperating Teachers. (1) [Within the
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The Education Professional Standards Board shall contract with the local school district, or make other appropriate arrangements, for the direct service of a cooperating teacher to each student teacher.

(a) The teacher education institution shall electronically submit [by approved electronic means] a report of all cooperating teachers and their corresponding student teachers to the Education Professional Standards Board.

1. On or before October 15 for a cooperating teacher supervising a student teacher during the fall semester; or
2. On or before March 15 for a cooperating teacher supervising a student teacher during the spring semester.

(b) Each report shall include:

1. The name of contract weeks that the cooperating teacher is working with each student teacher for that semester;
2. The cooperating teacher's full name and certificate number;
3. The student teacher's full name, Social Security number, and demographic data;
4. The student teacher's preparation and [I] certification area by assigned certification code;
5. The student teacher's anticipated graduation date; and
6. The name and assigned code of the school and school district where the cooperating teacher is employed and the student teaching requirement is being fulfilled.

(c) If a teacher education institution fails to provide the report by the date established in paragraph (a) of this subsection, the Education Professional Standards Board shall not be liable for payment under this administrative regulation. However, the student teacher may still receive credit for completing the student teaching requirement from the teacher education institution.

(d) Upon receipt of the report, the Education Professional Standards Board shall submit a "Cooperating Teacher Payment Voucher" to each cooperating teacher.

(b) The voucher shall be signed by the cooperating teacher, building principal, and the college coordinator as verification of the cooperating teacher's service to the student teacher.

(c) To be eligible for compensation under this administrative regulation, the cooperating teacher shall submit the completed voucher to the Education Professional Standards Board.

1. On or before December 15 for a cooperating teacher supervising a student teacher during the fall semester; or
2. On or before May 15 for a cooperating teacher supervising a student teacher during the spring semester.

(d) If a cooperating teacher fails to provide the completed voucher by the date established in paragraph (c) of this subsection, the cooperating teacher shall not be eligible to receive any compensation available under this administrative regulation. However, the student teacher may still receive credit for completing the student teaching requirement from the teacher education institution.

4(a) The maximum amount of the per semester payment to a cooperating teacher shall be determined based upon the total number of student teachers reported for the fiscal year.

(b) The payment shall be allocated to a cooperating teacher based upon the number of semesters the teacher [these] supervised a student teacher as reported in subsections (2) and (3) of this section.

(c) A cooperating teacher who supervises a student teacher for only a portion of the semester shall have the [his/her] payment prorated accordingly.

(d) The per-semester payment to a cooperating teacher shall not exceed the maximum amount established in paragraph (a) of this subsection [of this administrative regulation].

(e) Payments to cooperating teachers shall be disbursed to the school districts or nonpublic schools by the Education Professional Standards Board.

(a) On an annual basis; and
(b) On or before June 15.

(f) Compensation to cooperating teachers shall [only] be provided under this administrative regulation [when] state funds are appropriated for this purpose. Payment of state funds under this administrative regulation shall:

(a) Be a supplement to the compensation provided by a teacher education institution to a cooperating teacher who is supervising an institution's student teacher; and

(b) [State funds awarding the service of cooperating teachers shall] Not supplant the teacher education institutions' compensation responsibility.

Section 8. Incorporation by Reference. (1) "Cooperating Teacher Payment Voucher", revised 7/2000, is incorporated by reference.

(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair
APPROVED BY AGENCY: September 15, 2000
FILED WITH LRC: September 15, 2000 at 9 a.m.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARR's, November 14, 2000)

704 KAR 20:710. Professional certificate for instructional leadership - school principal, all grades.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.027, 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher or other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.027 specifically requires a preparation program for principals. A teacher education institution shall 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 the preparation and certification program for school principals, at all grade levels.

Section 1. Definitions. (1) "Level I" means the standards-based program of studies designed for minimal preparation to serve in the position of instructional leadership - school principal.

(2) "Level II" means the standards-based program of studies to attain the first five (5) year renewal of the certificate for the position of instructional leadership - school principal.

Section 2. Conditions and Prerequisites. (1) The provisional and professional certificate for instructional leadership - school principal shall be issued to an applicant who has completed an approved program of preparation and requirements, including assessments.

(2) The provisional and professional certificate for instructional leadership - school principal shall be valid for the position of school principal or school assistant principal for all grade levels.

(3) Prerequisites for admission to the program of preparation for the provisional and professional certificate for instructional leadership - school principal shall include:

(a) Qualification for a Kentucky classroom teaching certificate;
(b) A 2.5 grade point average on a 4.0 scale on all collegiate preparation;
(c) Successful completion of a generic test of communication skills, general knowledge, and professional education concepts approved by the Education Professional Standards Board as a condition for the issuance of a Kentucky classroom teaching certificate or other test authorized for this purpose by the appropriate state agency recognized by the Education Professional Standards Board through contract with Interstate Agreement on Qualification of Educational Personnel; and
(d) Successful completion of the Kentucky Teacher Internship Program, as provided in 704 KAR 20:690 [704 KAR 20:045], or two (2) years of successful teaching experience outside the state of Kentucky.

Section 3. [P] Kentucky Administrator Standards for Preparation and Certification. The approved program of preparation for the provisional certificate for instructional leadership - school principal shall
include a master's degree in education and shall be designed to address recommendations of relevant professional organizations including the National Policy Board for Educational Administration, the University Council for Educational Administration, the National Council of Professors of Educational Administration, the National Association of Secondary School Principals, and the American Association of School Administrators and to prepare a candidate for the position of School Principal as specified in the standards included in “Interstate School Leaders Licensure Consortium Standards for School Leaders” that is incorporated by reference and adopted by the Education Professional Standards Board. The standards are as follows:

(1) School leader standard 1. A school administrator is an instructional leader who promotes the success of all students by facilitating the development, articulation implementation, and stewardship of a vision of learning that is shared and supported by the school community;

(2) School leader standard 2. A school administrator is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth;

(3) School leader standard 3. A school administrator is an educational leader who promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(4) School leader standard 4. A school administrator is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(5) School leader standard 5. A school administrator is an educational leader who promotes the success of all students by acting with integrity, fairness, and in an ethical manner; and

(6) School leader standard 6. A school administrator is an educational leader who promotes the success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

Section 4, [5.] Assessment Prerequisites for the Provisional Certificate for Instructional Leadership - School Principal. (1) An applicant for certification as a school principal, including vocational principal, shall attain the specified minimum score on each of the following assessments prior to receiving the provisional certificate, except as provided by KRS 161.027(6):

(a) Kentucky Specialty Test of Instructional and Administrative Practices, with a score of eighty-five (85) percent correct responses; and

(b) The written test of applied knowledge approved by the Education Professional Standards Board.

(2) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.

Section 5, [4.] Statement of Eligibility for Internship. [1] A statement of eligibility for internship for the provisional certificate for instructional leadership - school principal shall be issued for a five (5) year period to an applicant who:

(a) [H] Has successfully completed an approved program of preparation;

(b) [R] Has three (3) years of full-time teaching experience; and

(c) [H] Has successfully completed the appropriate assessment requirements for the school principal certification or qualifies for a one (1) year period of completion of assessments under KRS 161.027(6).

(2) Application shall be made on Form TC-1.

Section 6, [5.] (1) A professional certificate for instructional leadership - school principal, level I, shall be issued upon successful completion of the principal internship as provided in KRS 161.027 and 704 KAR 20:470.

(2) The renewal of the professional certificate for instructional leadership - school principal, level I, shall require a recommendation from the approved recommending authority regarding the successful completion of an approved level II program. The certificate shall be valid for five (5) years.

(3) In addition to the requirements of KRS 161.027(9), each subsequent five (5) year renewal of the professional certificate for instructional leadership - school principal, level II, shall require:

(a) Successful completion of two (2) years of experience as a school principal within the preceding five (5) years; or

(b) If the applicant has not successfully completed the two (2) years of experience, completion of three (3) semester hours of additional graduate credit directly related to the position of school principal for each required year of experience the applicant has not completed; or

(c) Successful completion of forty-two (42) hours of approved training selected from programs approved by the Kentucky Effective Instructional Leadership Training Program provided in KRS 156.101.

Section 7, [6.] Implementation Dates. (1) The provisions for the issuance of the provisional and professional certificate for instructional leadership - school principal, levels I and II, shall apply to a student admitted to a program of preparation beginning September 1, 1998.

(2) A candidate admitted prior to September 1, 1998, to an approved preparation program for school principal under 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400 shall complete the program by September 1, 2000.

(a) A candidate formally admitted to an approved preparation program for school principal under 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400 by September 1, 1997, shall be eligible for the instructional leadership-school principal, all grades certificate upon:

1. Completion of the program in which the candidate is enrolled as identified in this subsection;

2. The successful completion of an approved additional three (3) to six (6) graduate semester hours. The additional graduate semester hours shall be designed to address content of the preparation program not addressed in 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400;

3. A recommendation from the institution of higher education for the appropriate certificate; and

4. Successful completion of the required assessment in effect at the time of application for the certificate.

(b) A candidate who holds a valid Kentucky principal certificate shall be eligible for the instructional leadership-school principal, all grades certificate upon:

1. Enrollment in an approved program of preparation that shall:
   a. Be designed to address leadership at all grade levels;
   b. Include school-based experiences; and
   c. Not require more than three (3) to six (6) additional hours of graduate credit; and

2. A recommendation from the institution of higher education for the appropriate certificate.

(3) A candidate who fails to complete the approved program and appropriate assessments specified in subsection (2) of this section by September 1, 2000, or does not apply for certification by May 1, 2001, shall be required to qualify for the certificate identified in this administrative regulation.

(4) A college or university shall take adequate steps to inform a candidate in these programs regarding the implementation dates identified in this section.

Section 8, [7.] Incorporation by Reference. (1)(a) "Interstate School Leaders Licensure Consortium Standards for School Leaders, 1996, the Council of Chief State School Officers" is incorporated by reference.

(b)(b) "Form TC-1, rev. 11/98" is incorporated by reference.

(2) This material may be inspected at the Education Professional Standards Board [Division of Testing and Internship; Office of Teacher Education and Certification; Kentucky Department], 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or obtained from either the Division of Testing and Internship or the Council of Chief State School Officers, Attn: Publications, One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431.

JOE EARLY, Chair
APPROVED BY AGENCY: August 15, 2000

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FILED WITH LRC: August 15, 2000 at noon

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, November 14, 2000)

704 KAR 20:750. Teachers’ National Certification Incentive Trust Fund.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.133 [2000 Ky. Acts ch. 257; sec. -3] establishes the Teachers’ National Certification Incentive Trust Fund, KRS 161.133(3) [to provide stipends for teachers to prepare for certification by the National Board of Professional Teaching Standards, to reimburse local boards of education for substitutes for substitute teachers, to reimburse a portion of the certification fee for successful certification candidates, and to provide stipends for board certified teachers to serve as mentors]

2000 Ky. Acts ch. 257, sec. 4(9) requires the Education Professional Standards Board to promulgate an administrative regulation to establish procedures for the administration of the fund and the requirements for participating teachers and local boards of education. KRS 161.134(9) [2000 Ky. Acts ch. 257, sec. 4(9)] requires the Education Professional Standards Board to promulgate an administrative regulation to establish the parameters for mentorship programs utilizing national board certified teachers. This administrative regulation establishes participation requirements and payment procedures relating to this fund.

Section 1. (1) To apply for payments from the trust fund, a Kentucky teacher shall:
(a) Submit a letter of intent to the Education Professional Standards Board; and
(b) Submit documentation to the Education Professional Standards Board from the National Board for [of] Professional Teaching Standards verifying registration as a candidate for national board certification.

2) A teacher shall submit these materials by December 31 in each of the two (2) years in which the teacher [the teacher] is eligible for payments under this fund.

3) Upon receipt of the materials required under this section, the Education Professional Standards Board shall notify the school district where the teacher pursuing national board certification is employed that the teacher [the teacher] is participating in the incentive program.

Section 2. (1) A teacher enrolled for participation in the incentive program under Section 1 of this administrative regulation shall submit a payment voucher, Form NBC-1, for the stipend of $200 per day for two (2) days beyond the school contract year to prepare for the certification assessment. Form NBC-1 shall be signed by:
(a) The teacher pursuing national board certification; and
(b) The superintendent, or the superintendent's [his/her] designee, of the school district where the teacher is employed.

(2) The teacher pursuing national board certification shall submit payment voucher Form NBC-1 by May 15.

Section 3. (1) The superintendent, on behalf of the local board of education, shall submit a payment voucher, Form NBC-2, for reimbursement for substitute teachers employed to allow the five (5) days of released time for the teacher pursuing national board certification who has been enrolled for participation in the incentive program under Section 1 of this administrative regulation.

(2) The superintendent shall submit payment voucher Form NBC-2 by May 15 of the school year in which the released time was used by the teacher pursuing national board certification.

(3) The teacher pursuing national board certification shall adhere to the [his/her] local board of education policy or procedure for the procurement of substitute teachers.

Section 4. (1) A teacher who successfully completes national board certification shall submit a payment voucher, Form NBC-3, for the seventy-five (75) percent reimbursement of the certification [registration/application] fee.

(2) The teacher shall submit Form NBC-3 within the school year in which the teacher is notified of the [his/her] successful completion of national board certification.

Section 5. (1) A local school district or group of districts may submit a proposal to the Education Professional Standards Board for a stipend for a national board certified teacher who serves as a mentor to teachers.

(2) The proposal shall be submitted on or before September 1 of the school year in which the mentoring will occur.

(3) The proposal shall be reviewed by the Education Professional Standards Board at its next regularly scheduled meeting based upon the following documents:
(a) Evidence of cooperation with the applicable school-based decision making councils [councils];
(b) Identification of each teacher [the teacher(s)] the national board certified teacher will be mentoring;
(c) The length and structure of the mentoring program;
(d) The goals and objectives of the mentoring program;
(e) The mentoring program’s impact on student learning;
(f) The mentoring program’s effect on teacher participants’ professional growth and development; and
(g) The stipend amount requested for the national board certified teacher serving as the mentor.

(4) A school district mentoring program approved by the Education Professional Standards Board shall submit a summary at the conclusion of the program detailing how the components identified in subsection (3) of this section were addressed and listing the mentoring program’s accomplishments.

(5) A national board-certified teacher who serves as a mentor in a program approved under this section of this administrative regulation shall receive a minimum stipend of [no-less-than] $1,000 for each teacher the national board-certified teacher is mentoring.

(6) A national board-certified teacher who is teaching full time shall not mentor more than three (3) teachers pursuing national board certification in a school year.

Section 6. (1) Payments made from this fund under the requirements of this administrative regulation shall be disbursed by the Kentucky Department of Education directly to the local school district in which the teacher pursuing national board certification is employed.

(2) The local school district shall be responsible for deducting any relevant withholdings prior to disbursing the funds to the teacher.


Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form NBC-1, 7/2000; [is incorporated by reference];
(b) Form NBC-2, 7/2000; and [is incorporated by reference];
(c) Form NBC-3, 7/2000 [is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair
APPROVED BY AGENCY: September 15, 2000
FILED WITH LRC: September 15, 2000 at 9 a.m.

LABOR CABINET
Department of Workers’ Claims
(As Amended at ARRS, November 14, 2000)


RELATES TO: KRS 342.001, 342.125, 342.260, 342.265, 342.270(7), 342.710, 342.715, 342.760

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STATUTORY AUTHORITY: KRS 342.260, 342.270(7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the commissioner to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(7) requires the commissioner to promulgate an administrative regulation establishing procedures for the resolution of claims; including, but not limited to, procedures that shall not be inconsistent with this administrative regulation establishing procedures for the resolution of claims before an arbitrator or Workers' Compensation Board.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).
(2) "[Arbitrator-] means an individual appointed pursuant to KRS 342.230(9).
(3) "Board" is defined by KRS 342.0011(10).
(4) "Civil rule" means the Kentucky Rules of Civil Procedure.
(5) "Commissioner" is defined by KRS 342.0011(9).
(6) "Date of filing" means the date a pleading, motion, or other document is received by the Commissioner at the Department of Workers' Claims in Frankfort, Kentucky, except final orders and opinions of administrators, administrative law judges, and the board, which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion.
(7) "Employer" means and includes individuals, partnerships, associations and corporations.
(8) 
(9) "An employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.840 but has not complied with KRS 342.340.
(10) "Administrative law judge" means any person appointed by the Commissioner to hear and determine cases between parties under this chapter.
(11) "Special defense" means defenses that shall be raised by "special answer" filed within forty-five (45) days of the notice of filing an application for resolution of claim, or within ten (10) days after discovery of facts supporting the defense if discovery could not have been had earlier in the exercise of due diligence. Special defenses shall be waived if not timely raised. Special defenses which shall be plead can be defenses arising under:
(a) KRS 342.035(3) unreasonable failure to follow medical advice;
(b) KRS 342.165 failure to comply with safety administrative regulation;
(c) KRS 342.316(6) and 342.335 false statement on employment application;
(d) KRS 342.395 voluntary rejection of KRS Chapter 342;
(e) KRS 342.610(3) voluntary intoxication and self-infliction of injury;
(f) KRS 342.710(5) refusal to accept rehabilitation services; and
(g) Running periods of limitations or repose under KRS 342.185, 342.270, 342.316, or other applicable statute.
(12) "Latest available edition" means that edition of the "Guides to the Evaluation of Permanent Impairment" which the commissioner has certified as being generally available to the department, attorneys, and medical practitioners, by posting prominently at the department's hearing sites the date upon which a particular edition of the "Guides to the Evaluation of Permanent Impairment" is applicable for purposes of KRS Chapter 342. [of the "Guides to the Evaluation of Permanent Impairment" means that edition which the commissioner has certified as being generally available to the department, attorneys, and medical practitioners. The commissioner shall by certification issued to the Workers' Compensation Board, and administrative law judges and posted prominently at the department's hearing sites the date upon which a particular edition of the "Guides to Evaluation of Impairment" is applicable for purposes of KRS Chapter 342.]

Section 2. Parties. (1) The party making the original application for resolution of claim pursuant to KRS 342.270 and 342.316 shall be designated as "plaintiff" and adverse parties as "defendants".
(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to exist. If any person should refuse to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.
(3) All persons shall be joined as defendants against whom the ultimate right to any relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An [arbitrator- or administrative law judge] may order, upon a proper showing, that a party be joined or dismissed.
(4) The Special Fund may be joined as a defendant in accordance with the appropriate statutory provisions for claims in which the injury date or date of last exposure occurred before December 12, 1996.
(5) A party that is joined in accordance with KRS 342.011 must be informed of the proceeding at least thirty (30) days before the date set for the hearing.
(6) A party that is joined in accordance with KRS 342.011 must be informed of the proceeding at least thirty (30) days before the date set for the hearing.
(7) Motion for allowance of a plaintiff's attorney fee shall be made

Section 3. Pleadings. (1) An application for resolution of claim and all other pleadings shall be typewritten and be submitted upon forms prescribed by the commissioner.
(2) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The commissioner shall make service by first class mail. Incomplete applications may be rejected and returned to the applicant. If the application is resubmitted in proper form within twenty (20) days of the date it was returned, the filing shall relate back to the date the application was first received by the commissioner. Otherwise, the date of second receipt shall be the filing date.
(3) All pleadings shall be served upon the commissioner and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to that representative, at the parties' or representatives' last known address. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. Notices of deposition and physical examination shall be served upon the parties and shall not be filed with the commissioner.
(4) After the application for resolution has been assigned to an [arbitrator-] administrative law judge, subsequent pleadings shall include, within the style of the claim and immediately before the claim number, ["Before arbitrator (name);" or] Before administrative law judge (name)"] or Before administrative law judge acting arbitrator (name). Upon consolidation of claims, the most recent claim number shall be listed first.

Section 4. Motions. (1) The party filing a motion shall tender a proposed order granting the relief requested.
(2) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be filed.
(3) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating such facts.
(4) Every motion, the grounds of which depend upon the existence of facts which the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.
(5) A motion, other than to reopen pursuant to KRS 342.125 or for interlocutory relief, may be considered ten (10) days after the date of filing. A response shall be considered if filed on or before the tenth day after the filing of the motion.
(6) A motion to reopen shall be accompanied by as many of the following items as may be applicable:
1. A current medical release Form 106 executed by the plaintiff;
2. An affidavit evidencing the grounds to support reopening;
3. A current medical report showing a change in disability established by objective medical findings;
4. A copy of the opinion and award, settlement, voluntary agreed order or agreed resolution sought to be reopened;
5. An affidavit certifying that a previous motion to reopen has not been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed.
(7) A motion to reopen shall not be considered until twenty-five (25) days after the date of filing. A response shall be served within twenty (20) days of filing the motion to reopen.
(8) Any party may use the following forms provided by the department for motions to reopen:
1. Motion to reopen by employee;
2. Motion to reopen by defendant; and
3. Motion to reopen KRS 342.732 benefits.
(9) Motion for allowance of a plaintiff's attorney fee shall be made
within thirty (30) days following the finality of the award, settlement or
good resolution upon which the fee request is based and be served
upon the adverse parties and the attorney’s client. The motion shall
be filed for receipt by both the Board and the Office of the
Commissioner of Labor and Industrial Relations. The motion
shall be accompanied by an affidavit of counsel detailing the
extent of the services rendered and the time expended, a signed and
dated Form 109 as required by KRS 342.320(5), and a copy of the
signed and dated contingency fee contract.

(8) A motion for allowance of defendant’s attorney’s fee shall be served
within thirty (30) days following the finality of the decision as
required by KRS 342.320. The motion shall be accompanied by an
affidavit of counsel detailing the extent of the services rendered and
the time expended, the hourly rate and total amount to be charged,
and the date upon which agreement was reached for providing the
legal services and a certification of any amounts previously paid on
the claim in question.

(9) The following motions relating to vocational rehabilitation training
provided by the department may be used by all parties:

(a) Petition for vocational rehabilitation training, and

(b) Joint motion and agreement to waive vocational rehabilitation
evaluation.

Section 5. Application for Resolution of an Injury Claim. (1) To
apply for resolution of an injury claim, the applicant shall file Form 101
with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on
a full or part-time basis within twenty (20) years preceding the date of
injury;

(b) Medical history (Form 105), to include all physicians, chiro-
practors, osteopaths, psychiatrists, psychologists, and medical facili-
ties such as hospitals where the individual has been seen or admitted
in the preceding fifteen (15) years and including beyond that date any
physicians or hospitals regarding treatment for the same body part
claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report describing the injury which is the basis of
the claim and, if a psychological condition is alleged, an additional
medical report establishing the presence of a mental impairment or
disorder. Medical reports required under this paragraph may consist of
legible, handwritten notes of a treating physician. [Medical reports
filed with an application shall be considered as evidence before the
arbitrator.]

(2) Defendant shall file a notice of claim denial or acceptance
(Firm 111) within forty-five (45) days after the date of issuance of
notice that an application for resolution has been filed in conformity
with Section 5(2) of this administrative regulation, or within forty-five
(45) days following an order sustaining a motion to reopen a claim if
none is filed; all allegations of the application shall be deemed
admitted. The notice of claim denial or acceptance shall set forth all perti-
inent matters which are admitted and those which are denied. If a claim is
denied in whole or in part, a defendant shall set forth a detailed
summary of the basis for denial, and the name of each witness
whose testimony may be relevant to that denial. This notice shall
include a description of the physical requirements of plaintiff’s job on
the alleged date of last exposure, the names of any witnesses; and the
name, address, and telephone number of the individual responsible for
gathering this information for the employer and its insurer, if any. This
requirement for filing a notice of admission or denial shall be in addi-
tion to the requirement to file a special answer in accordance with
Section 1(8) [99] of this administrative regulation although a denial
may assert the special defenses set out above.

(3) For all occupational disease and [or] hearing loss claims, the
commissioner shall promptly schedule an examination pursuant to
KRS 342.315 and 342.316.

(4) Proof taking and discovery for all parties shall proceed as set
forth in Section 2(2) of this administrative regulation [for a period
beginning with the date of issuance of notice that an application for
resolution of claim has been filed and including a date sixty (60)
days from the date the claim is assigned to an arbitrator].

(5) During the pendency of a claim, medical and vocational reports
shall be exchanged in accordance with Section 5(4) of this administra-
tive regulation. Any party obtaining a medical or vocational report or
records shall serve a copy of the report and records upon all other
parties within ten (10) days of the receipt.

Section 6. Application for Resolution of an Occupational Disease
Claim. (1) To apply for resolution of an occupational disease claim, the
applicant shall file Form 102 with the following completed attachments:

(a) Work history (Form 104), to include all past jobs performed on
a full or part-time basis within twenty (20) years preceding the date of
last exposure and all jobs in which plaintiff alleges exposure to the
hazards of the occupational disease;

(b) Medical history (Form 105), to include all physicians, chiro-
practors, osteopaths, psychiatrists, psychologists, and medical facili-
ties such as hospitals where the individual has been seen or admitted
in the preceding fifteen (15) years and including beyond that date any
physicians or hospitals regarding treatment for the same body part
claimed to have been injured.

(c) Medical release (Form 106);

(d) One (1) medical report supporting the existence of occupa-
tional disease. For coal related pneumoconiosis claims, the medical
report shall include both a chest x-ray examination and spirometric
tests if pulmonary dysfunction is alleged; [Medical reports filed with an
application shall be considered as evidence before the arbitrator.]

(e) Social Security earnings record release form [Form 115].

(2) Defendant shall file a notice of claim denial or acceptance
(Firm 111) within forty-five (45) days after the date of issuance of
notice that an application for resolution has been filed in conformity
with Section 5(2) of this administrative regulation, or within forty-five
(45) days following an order sustaining a motion to reopen a claim.
If none is filed, all allegations of the application shall be deemed
admitted. The notice of claim denial or acceptance shall set forth all perti-
inent matters which are admitted and those which are denied. If a claim is
denied in whole or in part, a defendant shall set forth a detailed
summary of the basis for denial, and the name of each witness
whose testimony may be relevant to that denial. This notice shall
include a description of the physical requirements of plaintiff’s job on
the alleged date of last exposure, the names of any witnesses; and the
name, address, and telephone number of the individual responsible for
gathering this information for the employer and its insurer, if any. This
requirement for filing a notice of admission or denial shall be in addi-
tion to the requirement to file a special answer in accordance with
Section 1(8) [99] of this administrative regulation although a denial
may assert the special defenses set out above.

(3) For all occupational disease and [or] hearing loss claims, the
commissioner shall promptly schedule an examination pursuant to
KRS 342.315 and 342.316.

(4) Proof taking and discovery for all parties shall proceed as set
forth in Section 2(2) of this administrative regulation [for a period
beginning with the date of issuance of notice that an application for
resolution of claim has been filed and including a date sixty (60)
days from the date the claim is assigned to an arbitrator].

(5) During the pendency of a claim, medical and vocational reports
shall be exchanged in accordance with Section 5(4) of this administra-
tive regulation. Any party obtaining a medical or vocational report or
records shall serve a copy of the report and records upon all other
parties within ten (10) days of the receipt.

Section 7. Application for Resolution of a Hearing Loss Claim. (1)
To apply for resolution of a hearing loss claim, the applicant shall file
Form 103 with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on
a full or part-time basis within twenty (20) years preceding the last date of
noise exposure;

(b) Medical history (Form 105), to include all physicians, chiro-
practors, osteopaths, psychiatrists, psychologists, and medical facili-
ties such as hospitals where the individual has been seen or admitted
in the preceding fifteen (15) years and including beyond that date any
physicians or hospitals regarding treatment for hearing loss or ear
complaints;

(c) Medical release (Form 106);

(d) One (1) medical report describing the hearing loss which is the basis
of the claim and, if a psychological condition is alleged, an additional
medical report establishing the presence of a mental impairment or
disorder. Medical reports required under this paragraph may consist of
legible, hand-written notes of a treating physician; [Medical reports
filed with an application shall be considered as evidence before the arbitrator.]
2. Each portion of a question requiring a separate answer shall be counted as a separate question.

3. Questions shall be presented in nontechnical terms and shall not request legal conclusions be made by the answering party.

4. The following questions shall not count towards the maximum number of questions allowed:
   a. A question requesting the name of the answering party;
   b. A question requesting whether the party is willing to supplement answers if pertinent information later becomes available;
   c. The party on whom the questions have been served shall serve a copy of the answers within fifteen (15) days after the service of the questions;

5. Answers to the questions shall be signed by the responding party, whose signature shall be notarized and may be admitted into evidence by any party by notice to all parties and the arbitrator.

6. If the defendant-employer is not a natural person, the defendant-employer shall designate an individual to answer the questions, and the attorney for the Special Fund shall be deemed to be answering on behalf of the Special Fund.

7. If a claim is not voluntarily resolved, the arbitrator shall, within ninety (90) days of assignment of the claim, render a written benefit review determination setting forth matters stipulated, matters denied, findings of fact, and conclusions of law.

8. At any time during the benefit review process, an arbitrator may determine that the pending claim presents factual issues best resolved through a hearing before an administrative law judge and enter an order transferring the claim to an administrative law judge for further proceedings.

Section 9: Medical Evaluations Pursuant to KRS 342.315. (1) All persons claiming benefits for coal workers' pneumoconiosis pursuant to KRS 342.732, hearing loss, or occupational disease shall be referred by the commissioner for a medical evaluation in accordance with contracts [the contract] entered into between the commissioner and the University of Kentucky and University of Louisville medical schools.

(2) Upon [For] all other claims, the commissioner, [an arbitrator] or an administrative law judge, in their discretion, or upon motion by a party, may direct appointment by the commissioner of a university medical evaluator [in accordance with contracts with the University of Kentucky and University of Louisville medical schools].

(3) Upon referral for medical evaluation under this section, the parties may tender additional relevant medical information to the university medical school to whom the evaluation is assigned. This additional information shall not be filed of record. The additional medical information shall be:
   a. Submitted to the university within fourteen (14) days following the order for medical evaluation pursuant to KRS 342.315;
   b. Submitted by way of medical reports, notes, or depositions;
   c. Clearly legible;
   d. Indexed;
   e. Furnished in chronological order;
   f. Timely furnished to all other parties pursuant to Section 5(4) of this administrative regulation;

(g) Accompanied by a summary that is filed of record and served upon all parties. The summary shall:
   1. Identify the medical provider;
   2. Include the date of medical services;
   3. Include the nature of medical services provided.

(4) Upon the scheduling of an evaluation, the commissioner shall provide notice to all parties and the employer shall forward to the plaintiff necessary travel expenses. Upon completion of the evaluation the commissioner shall provide copies of the report to all parties and shall file the original report in the claim record to be considered as evidence.

(5) The administrative law judge shall allow timely cross-examination of a medical evaluator appointed by the commissioner at the expense of the moving party.

(6) Unjustified failure by the plaintiff to attend the scheduled medical evaluation may be grounds for dismissal, payment of a no-show fee, sanctions, or all of the above.

(7) Failure by the employer or its insurance carrier to pay travel expenses within seven (7) days of notification of a scheduled medical
Section 11. Benefit Review Conferences. (1) The purpose of the benefit review conference shall be to expedite the processing of the claim and to avoid whenever possible the need for a hearing. (2) The benefit review conference shall be an informal proceeding. (3) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the benefit review conference. (4) The administrative law judge may upon motion waive the plaintiff’s attendance at the benefit review conference for good cause shown. (5) A transcript of the benefit review conference shall not be made. (6) Representatives of all parties shall have authority to resolve disputed issues and settle the claim at the benefit review conference. (7) Ten (10) days before the benefit review conference, the parties shall exchange lists of known witnesses that: (a) Name each proposed witness; (b) Summarize the anticipated testimony of each witness; and (c) For medical witnesses, the summary shall include: 1. The diagnosis reached; 2. Clinical findings and results of diagnostic studies upon which the diagnosis is based; 3. The functional impairment rating assessed by the witness; and 4. Describe any work-related restrictions imposed. (8) At the benefit review conference, the parties shall: (a) Attempt to resolve controversies and disputed issues; (b) Narrow and define disputed issues; and (c) Facilitate a prompt settlement. (9) A party seeking postponement of a benefit review conference shall file a motion at least fifteen (15) days prior to the date of the conference and shall demonstrate good cause for the postponement. (10) If at the conclusion of the benefit review conference the parties have not reached agreement on all the issues, the administrative law judge shall schedule a final hearing and prepare a summary stipulation of all contested and uncontested issues which shall be signed by representatives of the parties and by the administrative law judge. (11) Only contested issues shall be the subject of further proceedings. (12) Upon motion with good cause shown, the administrative law judge may order that additional discovery or proof be taken between the benefit review conference and the date of the hearing and may limit the number of witnesses to be presented at hearing.

Section 12. Appeals to Administrative Law Judges from Benefit Review Determinations. (1) Within thirty (30) days after the date of the filing of a written benefit review determination or ruling on petition for reconsideration from that benefit review determination by an arbitrator, any party aggrieved by the determination may appeal to an administrative law judge. No appeal shall be taken from a written benefit review determination that does not grant or deny the ultimate relief sought as to all parties without the need for further steps to be taken. (2) The appeal shall be initiated by filing a “Request for Hearing before an Administrative Law Judge”. The proceedings before the administrative law judge shall be de novo and cross appeals shall not be permitted. The appealing party shall be designated as petitioner and all parties against whom the appeal is taken as respondents. In the event that more than one (1) party appeals, the first party to file shall be designated petitioner and all other parties shall be designated respondent. The petitioner shall certify copies have been served upon all other parties: (3) The commissioner shall assign the claim to an administrative law judge and shall notify the parties of the schedule for presentation of proof and the time and place of the hearing. The scheduling order shall provide forty-five (45) days for all parties to present proof; thirty (30) days for a party designated as defendant in the proceeding before the arbitrator, and fifteen (15) days for rebuttal for a party designated as plaintiff in the proceeding before the arbitrator. (4) Within fifteen (15) days following assignment to an administrative law judge, the parties shall file a statement of proposed stipulations, notice of contested issues, and designation of any admissible evidence in the benefit review record upon which they intend to rely on appeal before the administrative law judge. Any party who fails to file a
timely statement of proposed stipulations shall be bound by stipulations made before the arbitrator, subject to relief under Section 17(2) of this administrative regulation. Admissible evidence in the benefit review record that is properly designated by a party shall be considered as filed in the record before the administrative law judge and shall not be resubmitted.

(2) The administrative law judge may order an informal conference for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposition of the case.

(6) At least fifteen (15) days prior to the scheduled hearing, each party shall serve a witness list and copies of known exhibits on all other parties and upon the commissioner. Except for good cause shown, any person not listed as a witness shall not present testimony. Each witness list shall state the name of the witness, the witness’s address, and a description and summarize the testimony of the witness, and shall identify matters in controversy. For each medical witness, the summary shall include a diagnosis, the physical findings; the results of diagnostic studies supporting the diagnosis, and an assessment of functional impairment in accordance with the most recent edition of the AMA Guides to Evaluation of Permanent Impairment.

(7) Except for evidence timely designated by the parties, information submitted to the arbitrator shall not be considered evidence before the administrative law judge. Proof and discovery before the administrative law judge shall be by way of notice of introduction of medical reports and depositions of lay witnesses. However, a report of a medical evaluator pursuant to KRS 342.315 shall become evidence before the administrative law judge without the filing of a notice or motion.

(8) If, during the pendency of a claim before an administrative law judge, the parties voluntarily resolve a claim, an agreement as to Compensation (Form 110) or agreed opinion and award shall be submitted for approval of the administrative law judge.

Section 13. [16] Extensions of Proof Time. (1) Extensions of time for producing evidence may be granted upon a showing of circumstances [e.-circumstance] that prevent preventing the party from timely introduction [introducing proof]. Motions for extension of time shall not be filed no later than five (5) days before the deadline sought to be extended. The extension or supporting affidavits shall set forth:

(a) The efforts to produce the evidence in a timely manner;
(b) Facts which prevented timely production; and
(c) The date of availability of the evidence; the probability of its production, and the materiality of the evidence.

(2) In the absence of compelling circumstances, only one (1) extension of thirty (30) days shall be granted to each side for completion of discovery or proof or deposition.

(3) The granting of an extension of time for completion of discovery or proof shall enlarge the time to all plaintiffs if the extension is granted to a plaintiff and to all defendants if an extension is granted to a defendant, and shall extend the time of the adverse party automatically except if the extension is for rebuttal proof.

Section 14. [17] Stipulation of Facts. (1) Refusal to stipulate facts which are not genuinely in issue shall warrant imposition of sanctions as established in Section 23 [25] of this administrative regulation. Assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

(2) Upon cause shown, a party may be relieved of a stipulation if the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous. Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 15. [18] Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except for Civil Rules 27, 33, and 36 which shall not apply to practice before the administrative law judges or the board. [In proceedings before arbitrators, depositions and questions shall be propounded in accordance with Section 6 of this administrative regulation.]

(2) Depositions may be taken by telephone if the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of a telephonic deposition shall relate the following information:

(a) That the deposition is to be taken by telephone;
(b) The address and telephone number from which the call will be placed to the witness;
(c) The address and telephone number of the place where the witness will answer the deposition call; and
(d) [Then ell] Opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party shall contribute proportionate costs of the conference call.

(3) The commissioner shall establish a medical qualifications index. An index number shall be assigned to a physician upon the filing of the physician’s qualifications. Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications. Qualifications shall be revised or updated by submitting revisions to the commissioner. Nothing in this administrative regulation [rule] shall preclude any party from inquiring further into
the qualifications of a physician.

Section 16. [19] Wage Certification. If at any time during the pendency of a claim wages are at issue, the employer shall promptly complete and serve a completed form AWW-1 on all other parties.

Section 17. [20] Hearings. (1) At hearing, the parties shall present proof concerning contested issues. If plaintiff or plaintiff's counsel fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the claim shall be taken under submission immediately or briefs may be ordered. Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages. Permission to increase the length of a brief shall be sought by motion. The administrative law judge may announce his decision at the conclusion of the hearing or shall defer decision until rendering a written opinion. A decision shall be rendered no later than sixty (60) days following hearing. The time of filing a petition for reconsideration or notice of appeal shall not begin to run until after the “date of filing” of the written opinion as established by Section 1 of this administrative regulation.

(3) The parties with approval of the administrative law judge may waive a final hearing. Waiver of a final hearing shall require agreement of all parties and the administrative law judge. The claim shall be taken under submission on the date of the order allowing the waiver of hearing and briefs may be ordered. A decision shall be rendered no later than sixty (60) days following the date of the order allowing the waiver of hearing.

Section 18. [21] Petitions for Reconsideration. (1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the filing of a [benefit-review determination or a] final order or award of an [arbitrator or] administrative law judge, clearly stating the error which the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies. The party filing the petition for reconsideration shall tender a proposed order granting the relief requested.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The [arbitrator or] administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 19. [22] Benefit Calculations for Settlements. (1) For computing lump sum settlements, the employer shall utilize the prescribed discount rate for its weeks of liability only, not for the entire award period. A discount shall not be taken on past due benefits by the employer or Special Fund. Lump sum settlements shall be calculated as follows:

(a) Determine the entire lump sum liability:

1. Compute the remaining weeks of liability in the award by subtracting the number of weeks past due from the entire number of weeks in the award.

2. Discount the number of weeks remaining in the award at the prescribed discount rate.

3. Multiply the weekly benefit rate by the discounted number of weeks remaining (subparagraph 2 of this paragraph) in award. The product equals the entire future lump sum liability for the award.

4. Add the amount of past due benefits to the future lump sum liability award (subparagraph 3 of this paragraph). The sum represents the entire lump sum value of the award.

(b) Determine the employer's lump sum liability as follows:

1. The employer's future liability shall be computed by determining its total weeks of liability less the number of weeks of liability past due.

2. The number of weeks remaining shall be discounted at the prescribed discount rate and multiplied by the amount of the weekly benefit.

3. Multiply the number of past due weeks by the amount of the weekly benefit.

4. The employer's entire liability for lump sum payment shall be determined by adding the results of paragraph (b)/(2)/(3) of this subsection.

(c) Determine the Special Fund's portion of the lump sum liability by subtracting the value of the employer's liability in lump sum (paragraph (b) of this subsection) from the entire value of the lump sum settlement (paragraph (a) of this subsection). The remainder shall be the Special Fund's lump sum liability.

(2) If the employer settles its liability for income benefits with the employee for a lump sum payment and a determination is made of the Special Fund's liability, the Special Fund's portion of income benefits shall be paid commencing with the date of approval of the employer's settlement and continuing for the balance of the compensable period.

(3) In computing settlements involving periodic payments, the employer shall pay its liability over the entire portion of the award, based on the number of weeks its liability bears to the entire liability for the claim. The Special Fund shall make all remaining payments for the balance of the compensable period.

(4) Pursuant to KRS 342.265, election by the Special Fund to settle on the “same terms” as the employer shall mean the Special Fund agrees to settle in the same manner as the employer in either a discounted lump sum or in periodic payments based upon its proportionate share of the permanent disability percentage paid by the employer. “Same terms” shall not include any additional payments the employer included for buy out of medical expenses, temporary total disability, rehabilitation, or other benefits for which the Special Fund is not liable.

(5) Parties involved in a lump-sum settlement of future periodic payments shall use the discount factor computed in accordance with KRS 342.265(3).

Section 20. [23] Appeals to Workers' Compensation Board. (1) Within thirty (30) days after the date of filing of a final award or order of an administrative law judge any party aggrieved by the order may appeal to the board. As used in this section “final order” shall be determined in accordance with Civil Rule 54.02(1) and (2).

(2) An appeal shall be initiated by the filing of a notice of appeal denoting the appealing party as the petitioner and all parties against whom the appeal is taken as respondents. The administrative law judge who rendered the order appealed from shall be named as a respondent. If appropriate, the Director of the Special Fund or the Director of the Coal Workers' Pneumoconiosis Fund shall be named as a respondent pursuant to KRS 342.120 or 342.1242. The workers' compensation claim number shall be set forth in all pleadings before the board.

(3) Any party other than the petitioner may file a cross-appeal through notice of cross-appeal filed within ten (10) days after notice of appeal is served. The cross-appeal shall designate the parties as appropriate (i.e., petitioner-cross-respondent).

(4) Notice of appeal, cross-appeal and all other pleadings before the board shall be served as established by Section 3 of this administrative regulation. The commissioner shall issue an acknowledgement to all parties of the filing of a direct appeal.

(5) If a ground for the appeal is fraud or misconduct pursuant to KRS 342.258(2), the board shall immediately schedule a hearing on that issue. All subsequent appeal time in the case shall be calculated from the date the transcript of hearing is filed instead of the date of filing of notice of appeal.

(6) Petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal. The organization and contents of petitioner's brief shall be as provided in Civil Rule 76.12(4)(c) except an index shall not be required and the appendix shall include copies of decision appealed, petitions for reconsideration, rulings on petitions, and cases cited from federal courts and foreign jurisdictions.

(7) Respondent's brief shall be filed within thirty (30) days of the date petitioner's brief was served. Organization and contents shall be provided in Civil Rule 76.12(4)(d) except an index shall not be required and the appendix shall include copies of cases cited from federal courts and foreign jurisdictions. If the respondent is also a cross-petitioner, a combined brief shall address issues raised by the cross-appeal.

(8) Failure of a party to timely file a brief may be grounds for imposition of one (1) or more of the following sanctions:

(a) Affirmation or reversal of the final order;

(b) Striking of an untimely brief;

(c) A fine of not more than $5000; or

(d) Dismissal of appeal of petitioner's original brief.
secure payment of compensation as provided by KRS 342.340 and:
(a) Thirty (30) days have expired since the finality of an award and a party in interest certifies the responsible employer has failed to initiate payments in accordance with that award;
(b) Upon showing that the responsible employer has filed a petition under any section of the Federal Bankruptcy code; or
(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

The plaintiff may by motion and affidavit demonstrate compliance with this section and request an [arbitrator or] administrative law judge to order payment from the Uninsured Employers' Fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for the payment, who has failed to secure payment of compensation as provided by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the Special Fund.

(4) The form, Motion for Payment from Uninsured Employers' Fund, provided by the department may be used by the employee.

Section 25, [26] Use of American Medical Association Guidelines in Coal Workers' Pneumoconiosis Cases. (1) Predicted normal values for FVC and FEV1 shall be determined in accordance with the latest edition of the American Medical Association Guideline. Age shall be determined as of the date of the evaluation. Height shall be measured while the plaintiff stands in his stocking feet and shall be rounded to the nearest centimeter. If the plaintiff's height is an odd number of centimeters, the next highest even height in centimeters shall be used.

(2) Formulas established by the guidelines for predicted normal FVC and FEV1 shall be applied and predicted values computed.

Section 26, [29] Request for Participation by the Kentucky Coal Workers' Pneumoconiosis Fund. (1) Following a final award or order approving settlement of a claim for coal workers' pneumoconiosis benefits pursuant to KRS 342.732, the employer shall tender a written request for participation to the Kentucky coal workers' pneumoconiosis fund within thirty (30) days. This request shall be in writing and upon a form supplied by the Director of the Kentucky Coal Workers' Pneumoconiosis Fund and shall be accompanied by the following documents:
(a) Plaintiff's application for resolution of claim;
(b) Defendant's notice of resistance, notice of claim denial or acceptance, and any special answer;
(c) All medical evidence upon which the award or settlement was based;
(d) Final [benefit review determination] opinion, or order of an [arbitrator or] administrative law judge determining liability for benefits, or order approving settlement agreement. If an administrative law judge's award was appealed, appellate opinions shall be attached;
(e) If the request for participation includes retaining incentive benefits under KRS 342.732, the employer shall certify that the plaintiff meets the relevant statutory criteria;
(f) If the request for participation is for settlement of a claim, the employer shall certify that the settlement agreement represents liability for benefits in the claim, and does not include any sums for other claims which the plaintiff may have against the employer;
(g) Within thirty (30) days following receipt of a completed request for participation, the director shall notify the employer and all other parties of acceptance or denial of the request.

(2) A denial shall be made upon a finding by the director that the employer failed to defend the claim or entered into a settlement agreement not supported by the medical evidence or which was procured by fraud or mistake. Denial shall be in writing and shall state the specific reasons for the director's action.

(3) Denial of a request for participation may be appealed to an administrative law judge within thirty (30) days following receipt. The administrative law judge shall determine if the denial was arbitrary, capricious, or in excess of the statutory authority of the director, and shall not reexamine the weight assigned to evidence by an [arbitrator or] administrative law judge in an [benefit review determination] award.

Section 22. [25] Withdrawal of Records. (1) A portion of any original records of the department shall not be withdrawn except upon an order of the commissioner, an administrative law judge, or a member of the board.

(2) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final. A party filing an exhibit may make arrangements to claim an exhibit prior to that time. If an unclaimed exhibit has no money value, it shall be destroyed; if an unclaimed exhibit has a value of more than $100, it shall be sold as surplus property; if an unclaimed exhibit has a value of less than $100, it shall be donated to the appropriate state agency; and, if an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 23, [26] Sanctions. Pursuant to KRS 342.310, [an arbitrator or] an administrative law judge, and the board may assess costs upon determination that proceedings have been brought, prosecuted, or defended without reasonable grounds. A sanction may be assessed against an offending attorney or representative rather than against the party. If a party is a governmental agency and attorney's fees are assessed, the fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of similar services had a private attorney been retained. Failure of a party to timely file any pleading required by this administrative regulation may be treated by an [arbitrator or] an administrative law judge, or the board as prosecuting or defending without reasonable grounds.

Section 24, [27] Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the Uninsured Employers' Fund of compensation shall be made upon the determination by an [arbitrator or] administrative law judge that the responsible employer failed to
(5) The employer shall promptly commence payment on all of the liability pursuant to the benefit review determination, award, or order and shall continue until the liability of the Kentucky Coal Workers' Pneumoconiosis fund is established. This duty of prompt payment shall continue during pendency of an appeal from denial of a request for participation.

(6) Upon an appeal from the denial of a request for participation, if the Kentucky Coal Workers' Pneumoconiosis fund does not prevail, it shall reimburse the employer for its proportionate share of the liability together with interest at the rate established in KRS 342.040.

[Section 30: Assignment to Arbitrators. (1) The assignment of appropriate claims to arbitrators pursuant to KRS 342.276(2) shall begin March 15, 1997.

(2) Provisions in this administrative regulation which apply solely to practice before an arbitrator shall apply to claims which are assigned to an arbitrator pursuant to KRS 342.276(2) and Section 29(1) of this administrative regulation.]

Section 27, [97:] Forms. [After March 15, 1997:] The Department of Workers Claims shall not accept applications or forms in use prior to the forms required by and incorporated by reference in this administrative regulation. Outdated applications or forms submitted after March 15, 1997 shall be rejected and returned to the applicant or person submitting the form. If the application or form is resubmitted on the proper form within twenty (20) days of the date it was returned, the filing shall date back to the date the application or form was first received by the commissioner. Otherwise, the date of the second receipt shall be the filing date.

Section 28, [92:] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 101, "Application for Resolution of Injury Claim", (revised June 20, 2000 [January 1, 1997 Edition]), Department of Workers Claims;

(b) Form 102, "Application for Resolution of Occupational Disease Claim", (revised June 2000 [January 1, 1997 Edition]), Department of Workers Claims;

(c) Form 103, "Application for Resolution of Hearing Loss Claim", (January 1, 1997 Edition), Department of Workers Claims;

(d) Form 104, "Plaintiff's Employment History", (January 1, 1997 Edition), Department of Workers Claims;

(e) Form 105, "Plaintiff's Chronological Medical History", (January 1, 1997 Edition), Department of Workers Claims;

(f) Form 106, "Medical Waiver and Consent", (January 1, 1997 Edition), Department of Workers Claims;

(g) Form 107-I, "Medical Report - Injury", (revised June 2000 [January 1, 1997 Edition]), Department of Workers Claims;

(h) Form 107-P, "Medical Report - Psychological", (revised June 2000 [January 1, 1997 Edition]), Department of Workers Claims;

(i) Form 108-OD, "Medical Report - Occupational Disease", (January 1, 1997 Edition), Department of Workers Claims;

(j) Form 108-CWP, "Medical Report - Coal Workers' Pneumoconiosis", (January 1, 1997 Edition), Department of Workers Claims;


(l) Form 109, "Attorney Fee Election", (March 15, 1995 Edition), Department of Workers Claims;

(m) Form 110-I, "Agreement - Injury", (revised June 20, 2000 [April 15, 1998 Edition]), Department of Workers Claims;


(o) Form 111-1, "Agreement - Injury and Hearing Loss", "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Department of Workers Claims;

(p) Form 111-CD, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Department of Workers Claims;

(q) Form 115, "Social Security Release Form", (January 1, 1997 Edition), Department of Workers Claims;

(r) Form AWW - 1, "Average Weekly Wage Form", (January 1, 1997 Edition), Department of Workers Claims;

(s) Lump Sum Settlement Tables, (April 15, 1997 Edition), Department of Workers Claims;

(t) Six (6) Percent Present Value Table (May, 1997 Edition);
or treatment of the same nature or for the same condition, if specifically stated.

(9) To seek adjudication of a dispute involving medical expenses; an employee; provider of medical services; employer or employer's medical payment obligor shall file a Form 112:

(4)(a) If an application for adjustment of claim concerning the injury or disease which is the subject of the dispute has not been filed, copies of the Form 112 and attachments sufficient to serve the other parties, including the employee, the employer, the medical payment obligor, and the medical provider, shall be filed with the commissioner, who shall make service on the named parties.

(b) An opposing party may, within twenty (20) days after service by the commissioner, file [and shall serve upon all other parties] a response, accompanied by an affidavit setting forth facts sufficient to show that the movant is not entitled to the relief sought; within twenty (20) days after service by the commissioner.

(c) A response shall be served on the commissioner and all other parties within the twenty (20) day limit established in paragraph (b) of this subsection [the parties].

(d) The [This] dispute shall be assigned to the Frankfort motion docket, where it shall be either summarily decided upon the pleadings or designated for further proceedings before an [proof-of-time and resolution by an arbitrator] administrative law judge.

(5) If an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, the movant shall file a Form 112 with the commissioner and shall also serve copies on the other parties of record. The movant shall further file a motion to join the medical provider as a party to the claim. This motion shall conformed with the requirements of 803 KAR 25:010, Section 4.

(6) Following resolution of a workers' compensation claim by [final opinion or order [of an arbitrator or administrative law judge], including an order approving settlement of a disputed claim], a motion to reopen pursuant to 803 KAR 25:010, Section 4(6), shall be filed in addition to the Form 112.

(a) Unless utilization review has been initiated, the motion to reopen and Form 112 shall be filed within thirty (30) days following receipt of a complete statement for services pursuant to 803 KAR 25:050.

(b) The motion to reopen and Form 112 shall be served on the parties, upon the employee, even if represented by counsel, and upon the medical providers whose services or charges are at issue. If appropriate, the pleadings shall also be accompanied by a motion to join the medical provider as a party.

(c) This dispute shall be assigned to the Frankfort [Judge] motion docket, where it shall be either summarily decided upon the pleadings, or [final] assigned to an administrative law judge for further proof time and final resolution.

(7) If there is a pending de novo hearing before an administrative law judge from an arbitrator's determination, the Form 112 shall be filed with the assigned administrative law judge who shall also render a decision on the medical dispute.

(8)(a) Except as provided by paragraph (b) of this subsection, a Form 112 shall be accompanied by a motion for a partial remand to the administrative law judge assigned to the claim if an appeal is pending before the Workers' Compensation Board concerning the injury or disease which is the subject of the dispute.

(b) If entitlement to medical services is dependent upon resolution of an issue on appeal, the Form 112 shall be accompanied by a motion to the Workers' Compensation Board to hold the Form 112 in abeyance pending a final decision on the appeal.

(8) [96] If the contested expense is subject to utilization review, a medical [fee] dispute shall not be filed prior to exhaustion [completion] of the utilization review process. The thirty (30) day period for filing a medical [fee] dispute shall be tolled by commencement of the utilization review process. Notice of utilization review shall be provided to the affected parties pursuant to 803 KAR 25:050. The employer or its medical payment obligor shall have thirty (30) days following the final utilization review [ar-medical-bill-audit] decision to file a medical [fee] dispute.

(9) [106] Repeated filing of identical Form 112's concerning the same subject matter shall not be necessary if an [arbitrator or] administrative law judge has ruled on both the past expenses and the necessity of future expenses. [If an order from an arbitrator or administrative law judge encompassing future treatment or expenses becomes final, the medical provider shall not tender a future statement for a service encompassed by the order to the employer or its medical payment obligor.

(11) A party aggrieved by a decision of an arbitrator in a medical fee dispute may appeal to an administrative law judge by following the procedures in 803 KAR 25:010.

(10) [108] A party aggrieved by a decision of the administrative law judge in a medical [fee] dispute may appeal to the Workers' Compensation Board by following the procedures established in 803 KAR 25:010, Section 20 [28].

Section 2. In accordance with KRS 342.310, a sanction:

(1) Shall be assessed, as appropriate, if:

(a) An employer or a medical payment obligor challenges a bill without reasonable medical or factual foundation; or

(b) A medical provider, without reasonable foundation, submits a bill for a non-work-related condition to an employer or its medical payment obligor; and

(2) May be imposed if a movant files a medical [fee] dispute prior to exhaustion of the required utilization review or medical bill audit procedures.

Section 3. Expedited Medical [Fee] Disputes. (1) If a dispute arises requiring expedited determination of the reasonableness, appropriateness or employer's liability for proposed medical care, the lack of which could lead to serious physical or mental disability or death, an employee or employer shall file a written request on Form 120EX to seek an expedited determination. The Form 120EX shall be filed with:

(a) An affidavit of the employee or other witness that the injury or disease which is the subject of the dispute is compensable under KRS Chapter 342 in the format prescribed in Appendix A; [ ]

(b) An affidavit of a physician which shall:

1. Explain [explain] why failure to obtain or undertake the proposed medical care within forty-five (45) days could lead to serious physical or mental disability or death of the employee;

2. Include;

a. [The physician's affidavit shall set forth] the diagnosis of the patient;

b. [ ] the clinical and diagnostic findings upon which the diagnosis is based;

c. [ ] the proposed treatment;

d. The [ - end] reason why immediate initiation of the proposed treatment is necessary; and

e. If feasible, an estimate of the cost of the proposed treatment;

3. [shall be presented. A physician's affidavit shall] Comply with the format established in Appendix B; and [ ]

(c) Other affidavit or authenticated document necessary to demonstrate that the movant is entitled to the relief sought.

(2) If a claim is currently assigned to an [arbitrator or] administrative law judge, the written request shall be directed to that [arbitrator or] administrative law judge.

(3) The Form 120EX and attachments shall be filed in triplicate with the commissioner who shall serve copies on the named parties.

(a) A respondent to a Form 120EX may file a response within ten (10) days of the date on which the Form 120EX is served by mail. Service shall be deemed complete the third day after mailing by the commissioner.

(b) A response shall be accompanied by an affidavit setting forth facts sufficient to demonstrate that the movant is not entitled to the relief sought, and shall be served on the other parties by the respondent.

(4) The [arbitrator or the] administrative law judge may refer the matter to a worker's compensation specialist or an ombudsman to attempt to effectuate a resolution of the dispute.

(5) The [arbitrator or] administrative law judge to whom a request for expedited determination of medical issues is assigned shall issue a ruling within seven (7) days after expiration of the response time.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
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LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, November 14, 2000)


RELATES TO: KRS 342.710
STATUTORY AUTHORITY: KRS 342.260(1), 342.710
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the Department of Workers' Claims to promulgate administrative regulations to carry out its work and the work of the administrative law judges [and arbitrators]. KRS 342.710(3) requires rehabilitation services for an employee who has suffered an injury covered by KRS Chapter 342. This administrative regulation establishes requirements for the provision of rehabilitation services pursuant to KRS 342.260 and 342.710.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Arbitrator" means an individual appointed pursuant to KRS 342.230(9).

(3) "Commission on Accreditation of Rehabilitation Facilities" or "CARF" means the national organization which accredits rehabilitation facilities.

(4) [4] "Directory of Qualified Rehabilitation Facilities" means the directory of facilities in Kentucky;

(a) Which are licensed pursuant to KRS Chapter 216B; and

(b) Which are accredited by CARF in either comprehensive inpatient rehabilitation or outpatient medical rehabilitation.

2. Whose application for accreditation is pending.

(5) [5] "Directory of Vocational Evaluation Facilities" means the directory of facilities in Kentucky which are:

(a) Accredited by CARF in the area of comprehensive vocational evaluation services; or

(b) Assessment centers operated by the Department for Technical Education.

(6) [6] "Medical rehabilitation services" means those medically oriented services beyond basic medical surgical and hospital treatment which are necessary for the accomplishment of feasible, practical, and justifiable physical rehabilitation goals.

(7) [7] "Rehabilitation services" means both medical rehabilitation services and vocational rehabilitation services provided pursuant to KRS 342.710.

(8) [8] "Vocational evaluation" means a comprehensive process which utilizes a combination of structured interviews and testing.

(9) [9] "Vocational rehabilitation services" means those vocationally related services which are necessary to restore an injured employee to suitable employment.

Section 2. Application for Listing in Directory of Qualified Rehabilitation Facilities. (1) An application for listing in the Directory of Qualified Rehabilitation Facilities shall not be required for a facility fully accredited by CARF in either comprehensive inpatient rehabilitation or outpatient medical rehabilitation as the names of those facilities are obtained from CARF.

(2) Provisional listing in the Directory of Qualified Rehabilitation Facilities may be granted by the Department of Workers' Claims to a facility:

(a) Which is licensed through the Cabinet for Health Services [Human Resources] pursuant to KRS Chapter 216B;

(b) Whose application to CARF for accreditation is pending; and

(c) That complies with the requirements established in subsection (3) of this section.

(3) A facility shall file the following with the Department of Workers' Claims to request provisional listing:

(a) Letter requesting provisional listing in the directory; and

(b) Copy of the application which has been submitted to CARF for accreditation in comprehensive inpatient rehabilitation or outpatient medical rehabilitation.

(4) The provisional listing shall be valid for one (1) year unless CARF accreditation is granted or denied prior to that time.
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Section 3. Referral of an Injured Employee by the Self-Insured Employer or Insurance Carrier. (1) A self-insured employer or insurance carrier may voluntarily refer an injured employee at any time for rehabilitation case management services involving the coordination of medical rehabilitation services and vocational rehabilitation services.

(2) A self-insured employer or insurance carrier shall refer an injured employee to a case manager who is qualified in either a certified case manager, certified rehabilitation counselor, certified insurance rehabilitation specialist, or certified rehabilitation registered nurse.

Section 4. Referral of an Injured Employee by an Administrative Law Judge or Arbitrator. (1) An administrative law judge or arbitrator may refer an injured employee to a Department of Workers’ Claims employee for implementation of rehabilitation services pursuant to KRS 342.710 (3).

(2) A Department of Workers’ Claims employee shall refer the employee for a vocational evaluation at a facility listed in the Directory of Vocational Evaluation Facilities.

(3) Absent medical incapacity or another compelling circumstance, the employee shall attend the vocational evaluation when scheduled.

(4) The cost of the vocational evaluation including travel expenses shall be paid by the employer or other party designated by the administrative law judge or arbitrator.

(5) The employee’s travel expenses shall be reimbursed in accordance with 200 KAR 2:005.

(6) Upon receipt of the vocational evaluation report, the employee and the employer or insurance carrier shall cooperate in the implementation of services designed to restore the employee to suitable employment.

WALTER W. TURNER, Commissioner
APPROVED BY AGENCY: September 12, 2000
FILED WITH LRC: September 12, 2000 at 4 p.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(As Amended at ARRIS, November 14, 2000)

902 KAR 2:020. Disease surveillance.

RELATES TO: KRS 211.180 (1), 214.010, 214.645, 333.130
STATUTORY AUTHORITY: KRS 194A.050 [194:050], 211.090 (3), 214.010, 333.130
NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-666, effective July 2, 1996, recognized the Cabinet for Human Resources; established and created the Cabinet for Health Services; changed the name of the Department for Health Services to Department for Public Health, and placed the Department for Public Health and all its programs under the Cabinet for Health Services.] KRS 211.180 requires the Cabinet for Health Services [Human Resources] to implement a statewide program for the detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other diseases and health hazards that may be controlled. KRS 214.010 requires every physician and every head of family to notify [This administrative regulation requires that notification be made to the local health department and the Department for Public Health] of the existence of diseases and conditions of public health importance, known to him or her. This administrative regulation establishes notification standards and specifies the diseases requiring urgent, priority, or routine notification, in order to facilitate rapid public health action to control diseases, and permit an accurate assessment of the health status of the Commonwealth.

Section 1. Notification Standards. (1) A health professional licensed under KRS Chapters 311 through 314, and a health facility licensed under KRS Chapter 216B, shall give notification pursuant to [as provided by] subsection (3) of this section, if:

(a) A health professional makes a probable diagnosis of a disease specified [listed] in Section 2, 3, or 4 of this administrative regulation;

(b) The diagnosis is supported by:

1. "Case Definitions for Infectious Conditions under Public Health Surveillance"; or

2. A reasonable belief that the disease is present.

(2) A single report by a hospital of a condition diagnosed by a test result from the hospital laboratory shall constitute notification on behalf of the hospital and its laboratory.

(b) A hospital may designate an individual to report on behalf of the hospital's laboratory and the hospital's clinical facilities.

(c) The notification shall be given to:

(a) Local health department serving the jurisdiction in which the patient resides; or

(b) Department for Public Health.

(d) Except as provided by Section 3(2) of this administrative regulation, the reporting professional shall furnish the:

(a) Name, birthdate, address, county of residence, and telephone number of the patient; and

(b) Clinical, epidemiologic, and laboratory information pertinent to the disease.

(5) Upon the confirmation of a laboratory test result which indicates infection with an agent associated with one or more of the diseases or conditions specified [listed] in Section 2, 3, or 4 of this administrative regulation, the director of a clinical laboratory licensed under KRS Chapter 333 shall:

(a) Report the result to:

1. Local health department serving the jurisdiction in which the patient resides;

2. [Local health department in which the laboratory is located; if that local health department is agreeable to distribute reports on residents of other jurisdictions; or]

3. Department for Public Health; and

(b) Include in the report name, birthdate, address, county of residence [the demographic and clinical information available to the laboratory]; and

(c) Not report cases of Hepatitis B under the provisions of this subsection, except for a pregnant woman, or a child born after 1992; the provisions of this subsection shall not apply to Hepatitis B.

1. Hepatitis B or
2. Hepatitis G.

Section 2. Diseases Requiring Urgent Notification. (1) Notification pursuant to Section 1(3) of this administrative regulation of the following diseases [specified in subsection (4) of this section] shall be made within [made immediately; in a time period not greater than twenty-four (24) hour;]

(a) Anthrax;

(b) Botulism;

(c) Brucellosis;

(d) Campylobacteriosis;

(e) Cryptosporidiosis;

(f) Cholera;

(g) Diphtheria;

(h) Escherichia coli O157:H7;

(i) Escherichia coli, shiga toxin positive;

(j) Encephalitis, California group;

(k) Encephalitis, Eastern equine;

(l) Encephalitis, St. Louis;

(m) Encephalitis, Venezuelan equine;

(n) Encephalitis, Western;

(o) Encephalitis, West Nile Virus;

(p) Hansen’s Disease;

(q) HIV/AIDS;

(r) Hemophilus influenzae invasive disease;

(s) Hepatitis A;

(t) Listeriosis;

(u) Measles;

(v) Meningococcal infections;

(w) Pertussis;
(x) Plague;
(y) Poliomyelitis;
(z) Pestilence;
(a) Q fever;
(b) Rabies, animal;
(c) Rabies, human;
d) Rubella;
(e) Rubella syndrome, congenital;
(f) Salmonellosis;
g) Shigellosis;
h) Syphilis, primary, secondary, early latent or congenital;
i) Tetanus;
j) Tuberculosis;
k) Typhoid fever;
l) Vibrio parahaemolyticus;
m) Vibrio vulnificus;
n) Yellow fever.

(2) Weekend or evening urgent notification.
(a) If health department personnel cannot be contacted directly, notification shall be made by electronic submission or by telephone to an emergency number(s), staffed either in person or with a tape recording; provided by the local health department or the Department for Public Health.
(b) For the protection of patient confidentiality, this notification shall include:
1. The name of the condition being reported; and
2. A telephone number that can be used by the department to contact the reporting professional.
(3) Upon receipt of a report for a disease specified (listed) in subsection (1) ([44]) of this section, the local health department shall:
(a) Immediately notify the Department for Public Health; and
(b) Assist the department in carrying out a public health response as instructed.

(44) (a) Anthrax;
(b) Botulism;
(c) Cholera;
(d) Diphtheria;
(e) Encephalitis, California group;
(f) Encephalitis, Eastern equine;
(g) Encephalitis, St. Louis;
(h) Encephalitis, Western;
(i) Group A streptococcal infection, invasive;
(j) Hansen’s Disease;
(k) Herpesvirus infection;
(l) Hemophilus influenzae, invasive disease;
(m) Meningococcal infections;
(n) Pertussis;
(o) Plague;
(p) Poliomyelitis;
(q) Pestilence;
r) Rabies, human;
s) Rabies;
t) Rubella;
u) Rubella syndrome, congenital;
v) Syphilis, primary, secondary, early latent or congenital;
w) Tetanus;
x) Toxic shock syndrome;
y) Typhoid fever;
z) Yellow fever.

Section 3. Diseases Requiring Priority Notification. (1) Notification pursuant to Section 3(3) of this administrative regulation of the following diseases [specified in this section] shall be made within one (1) business day:
(a) Group A streptococcal infection, invasive;
(b) Hepatitis B, acute;
(c) Hepatitis B infection in a pregnant woman or a child born in or after 1992;
(d) Mumps;
(e) Toxic shock syndrome;
(f) Tuberculosis.
(2) Upon receipt of a report for a disease or condition specified (listed) in subsection (1) ([39]) of this section, a local health department:
(a) Shall investigate the report and carry out public health measures appropriate to the disease or condition;
(b) Shall notify the Department for Public Health of the case, in writing, within five (5) business days; and
(c) May seek assistance from the Department for Public Health.
(3) If [E. coli O157:H7];
(b) Esch. coli;
(c) Hepatitis A;
(d) Lyme Disease;
(e) Malaria;
(f) Mumps;
(g) Rocky Mountain Spotted Fever;
(h) Shigellosis; and
(i) Tuberculosis.

Section 4. Diseases Requiring Routine Notification. (1) Notification pursuant to Section 1(3) of this administrative regulation of the following diseases [specified in subsection (3) of this section] shall be made within five (5) business days:
(a) Chancroid;
(b) Chlamydia trachomatis infection;
(c) Ehrlichiosis;
(d) Gonorrhea;
(e) Granuloma inguinale;
(f) Hepatitis C, acute;
(g) Histoplasmosis;
(h) Lead poisoning;
(i) Legionellosis;
(j) Lyme Disease;
(k) Lymphogranuloma venereum;
(l) Malaria;
(m) Rabies postexposure prophylaxis;
(n) Rocky Mountain Spotted Fever;
(o) Streptococcus pneumoniae, drug-resistant invasive disease;
(p) Syphilis, other than primary, secondary, early latent or congenital;
(q) Toxoplasmosis;
(r) Upon receipt of a report for a disease or condition specified in subsection (1) of (listed in) this section, a local health department shall:
(a) Make a record of the report;
(b) Answer inquiries or render assistance regarding the report requested by the reporting entity; and
(c) Forward the report to the Department for Public Health within three (3) business days.
(39) (a) Brucellosis;
(b) Chancroid;
(c) Chlamydia trachomatis infection;
(d) Gonorrhea;
(e) Hepatitis B, acute;
(f) Hepatitis B infection in a pregnant woman or a child born in or after 1992;
(g) Hepatitis C, acute;
(h) Histoplasmosis;
(i) Lead poisoning;
(j) Legionellosis;
(k) Listeriosis;
(l) Rabies post-exposure prophylaxis; and
(m) Syphilis, other than primary, secondary, early latent or congenital;
(n) Tetanus;

Section 5. Outbreaks or Unusual Public Health Occurrences. (1) If, in the judgment of a health professional licensed under KRS Chapter 311 through 314, or a health facility licensed under KRS Chapter 216B, an extraordinary number of cases or occurrences of a disease or condition has appeared, considering the age group, geographic location, and previous disease experience of the population in question, a report shall be made to the:
(a) Local health department where the professional is practicing or where the facility is located; or
(b) Department for Public Health.
(2) An instance of suspected staphylococcal or other foodborne intoxication or an instance of salmonellosis or other foodborne or wa-
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Terborne infection shall be reported within one (1) business day, and shall include all known information about the persons affected.

(3) The local health department:
(a) Shall investigate the outbreak or occurrence;
(b) Shall carry out public health measures appropriate to the disease or condition involved;
(c) Shall make medical and environmental recommendations appropriate to prevent future similar outbreaks or occurrences; and
(d) May seek assistance from the Department for Public Health.

Section 5. Laboratory Surveillance. (1)(a) In addition to the reports required by Sections 1 through 4 of this administrative regulation, laboratory results shall be reported weekly for influenza virus isolates. [each disease specified in subsection (2) of this section as follows:]
(b) The report [established in paragraph (a) of this subsection] shall include:
1. Name, birthdate, address, and county of residence of the person with the disease; and
2. Specific laboratory information pertinent to the result.
(c) [6] The format of the report shall be an alphabetical listing of each person for whom a report is submitted [that contains the information specified by paragraph (e) of this subsection].
(2) [4] Upon request by the Department for Public Health, a clinical laboratory within a hospital licensed under KRS Chapter 215B, or a laboratory licensed under KRS Chapter 333, shall report:
(a) The numbers of isolates and information regarding the antimicrobial resistance patterns of the isolates;
(b) [Made] At intervals agreed upon between the laboratory and the department, not less frequently than three (3) months, for the following:
1. *Streptococcus pneumoniae*;
2. *Staphylococcus aureus*;
3. *B. thailandensis*;
4. *E. coli*;
5. *HIV culture*;
6. *HIV antigen*;
7. *HIV assay* including absolute CD4+ cell counts and CD4+%;
8. *HIV detectable Viral Load Assay [Assays]*; and
9. A positive serologic test result for HIV infection; or
(b) A diagnosis of AIDS that meets the definitions of AIDS established in:
1. "Adult HIV/AIDS Confidential Case Report Form";
2. "Pediatric HIV/AIDS Confidential Case Report Form".
(2) An HIV infection or [and] AIDS diagnosis [diagnoses] shall be reported within five (5) business days and, if [whenever] possible, on the "Adult HIV/AIDS Confidential Case Report form" or the "Pediatric HIV/AIDS Confidential Case Report form".
(a) A report for a resident [Reports for residents] of Jefferson, Henry, Oldham, Bullitt, Shelby, Spencer, and Trimble Counties shall be submitted to the HIV/AIDS Surveillance Program of the Jefferson County Health Department.
(b) A report for a resident of another Kentucky county [Reports for residents of all other Kentucky counties] shall be submitted to the HIV/AIDS Surveillance Program of the Kentucky Department for Public Health, or as directed by the HIV/AIDS project coordinator.
(3) A report for a person [Reports for persons] with HIV infection without a diagnosis of AIDS shall be identified in the following order by a Unique Identifier (UI) consisting of the person's [persons]:
(a) Initials of first and last name;
(b) Birth Date, [including the format MMDDYY]; and
(c) Last four (4) digits of [his] Social Security number.
(4) The following additional information shall be included with each report for a person [reported for persons] with HIV infection without a diagnosis of AIDS:
(a) Gender;
(b) Race;
(c) Risk factor, as identified by CDC;
(d) County of residence;
(e) Name of facility submitting report;
(f) Date and type of HIV test performed;
(g) Results of CD4+ cell counts and CD4+%;
(h) Results of viral load testing;
(i) PCR, HIV culture, HIV antigen, if performed;
(j) Results of TB testing, if available; and
(k) HIV status of the person's partner, spouse or children.
(5) By the initials of the patient's first and last name and shall include:
(a) Date of birth;
(b) Gender;
(c) Race;
(d) Risk factor, as identified by CDC, if known;
(e) County of residence;
(f) Name of facility submitting the report;
(g) Date and type of test performed;
(h) Results of tuberculosis testing, if available;
(i) Identifying and locating information for the person's spouse, if applicable.
(4) Reports of AIDS cases shall include the patient's full name and the information in subsections [subsections] (1) through (4) [through (e)] of this section; and
(a) The patient's complete address;
(b) CD4+ cell count, if known;
(c) Opportunistic infections diagnosed; and
(d) Date of onset of illness.
(6) [5] Reports of AIDS shall be made whether or not the patient has been previously reported as having HIV infection.
(b) If the patient has not been previously reported as having HIV infection, the AIDS report shall also serve as the report of HIV infection.
(7) A physician or medical laboratory that makes a report under this section [Physicians and medical laboratories] shall maintain a log with the name of the patient who tested positive and the unique identifier assigned.

Section 8. Reporting of Communicable Diseases in Animals. (1) Upon arriving at a probable diagnosis in an animal of a condition known to be communicable to humans, a veterinarian licensed under the provisions of KRS Chapter 321 shall report the occurrence within one (1) business day to:
(a) The local health department in which the animal is located; or
(b) If the local health department cannot be reached, the Department for Public Health.
(2) Upon the confirmation of a laboratory test result which indicates infection of an animal with an agent associated with a condition known to be communicable to humans, the director of a clinical laboratory licensed under KRS Chapter 333 shall, within one (1) business day, report the result to the:
(a) Local health department serving the jurisdiction in which the animal is located; or
(b) Department for Public Health.
(3) The local health department:
(a) Shall investigate the report and carry out public measures for the control of communicable diseases appropriate to the condition;
(b) Shall notify the Department for Public Health of the occurrence, in writing, within five (5) business days; and
(c) May seek assistance from the Department for Public Health.
Section 9. Asbestos, Coal Worker's Pneumoconiosis, and Silicosis. (1) A reporting provider shall submit the following information relating to a person diagnosed with asbestosis, coal worker's pneumoconiosis, or [and] silicosis:
(a) Name;
(b) Address;
(c) Birthdate; and
(d) County of residence.
(2) A reporting provider shall submit the required information [required by subsection (1) of this section] to the department within [no later than] three (3) months following the diagnosis.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference [in this administrative regulation]:
(a) "[Case Definitions for Infectious Conditions under Public Health Surveillance][3]," MMWR, May 2, 1997, Volume 46, Number RR-10, published by the Epidemiology Program Office, Centers for Disease Control and Prevention, Public Health Service, U.S. Department of Health and Human Services, Atlanta, Georgia;
(b) "[Adult HIV/AIDS Confidential Case Report (CDC 50.42A, Revised January, 2000 [July, 1999])];" and
(c) "[Pediatric HIV/AIDS Confidential Case Report form (CDC 50.42B, Revised January, 2000)];"
(2) This material [incorporated by reference] 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.; Monday through Friday.

RICE C. LEACH, M.D., Commissioner
JIMMY D. HELTON, Secretary
APPROVED BY AGENCY: August 30, 2000
FILED WITH LRC: September 5, 2000 at 8 a.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(As Amended at ARRS, November 14, 2000)

902 KAR 17:041. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010 to 216B.130
STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(19), 216B.040(2)(a)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.015(19) requires the Cabinet for Health Services to oversee development and annual updating of the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2000 [1999] Update to the 1998-2000 State Health Plan shall be used to:
(1) Review a certificate of need application pursuant to KRS 216B.040; and
(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(20)(a) and 216B.061(1)(d).

Section 2. Updating of Inventories and Need Analysis. (1) The cabinet shall update the inventory of licensed or certificate of need approved health services and health facilities and the need analysis established in the State Health Plan on a periodic basis to reflect any changes in inventory or need projections for health services and health facilities. The most current update shall be used in making certificate of need decisions.
(2) Notice of an update shall be published in the cabinet's certificate of need newsletter.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621 [40604], Monday through Friday, 8 a.m. to 4:30 p.m.

RICE C. LEACH, Commissioner
JOHN WALKER, Attorney
JIMMY D. HELTON, Secretary
APPROVED BY AGENCY: October 4, 2000
FILED WITH LRC: October 4, 2000 at 1 p.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Physical Health
(As Amended at ARRS, November 14, 2000)

907 KAR 1:626. Reimbursement of dental services.
RELATES TO: KRS 205.520, 42 CFR 440.100 [441.39], 447 Subpart B, 42 USC 1396a-d
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520 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. This administrative regulation establishes the method for determining the amount payable by the cabinet for [a [teeth]] dental service.

Section 1. Definitions. (1) "Comprehensive orthodontic procedure" means a medically-necessary dental service for a dentofacial malocclusion which requires the application of braces for correction.
(2) "Department" means the Department for Medicaid Services or its designated agent.
(3) (a) "Medically necessary" or "medical necessity" means that a covered benefit shall be:
(a) Provided in accordance with 42 CFR 440.230;
(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;
(c) Clinically appropriate in terms of amount, scope, and duration based on generally-accepted standards of good medical practice;
(d) Provided for medical reasons rather than primarily for the convenience of the recipient, caregiver, or the provider;
(e) Provided in the most appropriate location, with regard to generally-accepted standards of good medical practice, where effectively provided;
(f) If used in reference to an emergency medical service, needed to evaluate or stabilize an existing emergency medical condition that is found to exist using the prudent layperson standard; and
(g) Provided in accordance with Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements established in 42 USC 1396d(e) and 42 CFR 441 Subpart B for recipients under twenty-one (21) years of age.
(4) (a) "Prior authorization" or "PA" means approval which a provider shall obtain from the department before Medicaid will make reimbursement for a covered service.
(b) (a) "Recipient" is defined in KRS 205.8451.
(c) (b) "Medically high risk" means a patient in one (1) of the following classifications:
(a) Heart disease;
(b) Respiratory disease;
(c) Chronic bleeder;
(d) Uncontrollable patient, e.g., a person with a mental or emotional disorder; or
treatment services are not needed or the provider is unable or unwilling to provide the needed orthodontic treatment services; or

(b) [as referring to the recipient to a specialist;

2-] Prior authorization for comprehensive orthodontic services is not approved by the department or is not requested by the provider.

(3) An [or-

3-] A request for prior authorization of orthodontic services is not made;

(b) early phase for moderately severe or severe disabling malocclusion, $1,367 [1,386] for an orthodontist and $1,224 [1,224] for a general dentist;

(4) A service [or Services] for moderately severe disabling malocclusions, $1,825 [1,975] for an orthodontist and $1,659 [1,659] for a general dentist; and


(2) The upper limit for the following procedures shall be the fixed upper limit derived utilizing the methodology described in Section 2 of this administrative regulation increased by the following fixed percentages:

<table>
<thead>
<tr>
<th>Procedures</th>
<th>Percentage Of Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Oral Exam</td>
<td>25%</td>
</tr>
<tr>
<td>Prophylaxis</td>
<td>20%</td>
</tr>
<tr>
<td>Amalgam</td>
<td>10%</td>
</tr>
<tr>
<td>Resin</td>
<td>7%</td>
</tr>
<tr>
<td>Prefabricated Stainless Steel Crown</td>
<td>5%</td>
</tr>
<tr>
<td>Prefabricated Resin Crown</td>
<td>5%</td>
</tr>
<tr>
<td>Pin Retention</td>
<td>10%</td>
</tr>
<tr>
<td>Pulp Capping (Direct)</td>
<td>10%</td>
</tr>
<tr>
<td>Pulpotomy (Therapeutic)</td>
<td>10%</td>
</tr>
<tr>
<td>Root Canal</td>
<td>10%</td>
</tr>
<tr>
<td>Simple Extraction</td>
<td>5%</td>
</tr>
</tbody>
</table>

Section 5. Reimbursement Rates for Dental Services. Except as specified in Section 4 of this administrative regulation, the following maximum upper limits for reimbursement shall be applicable:

<table>
<thead>
<tr>
<th>Kentucky Medicaid Dental Services</th>
<th>Description</th>
<th>Upper Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emergency call (trauma related injuries only)</td>
<td>$33</td>
<td></td>
</tr>
<tr>
<td>Comprehensive oral evaluation</td>
<td>$26</td>
<td></td>
</tr>
<tr>
<td>Intraoral complete series</td>
<td>$49</td>
<td></td>
</tr>
<tr>
<td>Intraoral periapical, first film</td>
<td>$8</td>
<td></td>
</tr>
<tr>
<td>Intraoral periapical, each additional film</td>
<td>$6</td>
<td></td>
</tr>
<tr>
<td>Bitewing, single film</td>
<td>$7</td>
<td></td>
</tr>
<tr>
<td>Bitewing, 2 films</td>
<td>$14</td>
<td></td>
</tr>
<tr>
<td>Bitewing, 4 films</td>
<td>$23</td>
<td></td>
</tr>
<tr>
<td>Panoramic film</td>
<td>$39</td>
<td></td>
</tr>
<tr>
<td>Cephalometric film</td>
<td>$47</td>
<td></td>
</tr>
<tr>
<td>Prophylaxis, 14 and over</td>
<td>$37</td>
<td></td>
</tr>
<tr>
<td>Prophylaxis, 13 and under</td>
<td>$37</td>
<td></td>
</tr>
<tr>
<td>Sealant per tooth (ages 5-20)</td>
<td>$15</td>
<td></td>
</tr>
<tr>
<td>Space maintainer, fixed unilateral</td>
<td>$104</td>
<td></td>
</tr>
<tr>
<td>Space maintainer, fixed bilateral</td>
<td>$202</td>
<td></td>
</tr>
<tr>
<td>Space maintainer, removable unilateral</td>
<td>$134</td>
<td></td>
</tr>
<tr>
<td>Space maintainer, removable bilateral</td>
<td>$202</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 1 surface, primary</td>
<td>$38</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 2 surfaces, primary</td>
<td>$48</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 3 surfaces, primary</td>
<td>$57</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 4 or more surfaces, primary</td>
<td>$67</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 1 surface, permanent</td>
<td>$38</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 2 surfaces, permanent</td>
<td>$50</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 3 surfaces, permanent</td>
<td>$59</td>
<td></td>
</tr>
<tr>
<td>Procedure (Diagnosis)</td>
<td>Fee</td>
<td></td>
</tr>
<tr>
<td>---------------------------------------------------------------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>Amalgam, 4 or more surfaces, permanent</td>
<td>$272</td>
<td></td>
</tr>
<tr>
<td>Resin, 1 surface, anterior</td>
<td>$44</td>
<td></td>
</tr>
<tr>
<td>Resin, 2 surfaces, anterior</td>
<td>$55</td>
<td></td>
</tr>
<tr>
<td>Resin, 3 surfaces, anterior</td>
<td>$66</td>
<td></td>
</tr>
<tr>
<td>Resin, 4 or more surfaces, anterior</td>
<td>$78</td>
<td></td>
</tr>
<tr>
<td>Resin, 1 surface, posterior primary</td>
<td>$44</td>
<td></td>
</tr>
<tr>
<td>Resin, 2 surfaces, posterior primary</td>
<td>$55</td>
<td></td>
</tr>
<tr>
<td>Resin, 3 or more surfaces, posterior primary</td>
<td>$66</td>
<td></td>
</tr>
<tr>
<td>Resin, 1 surface, posterior permanent</td>
<td>$44</td>
<td></td>
</tr>
<tr>
<td>Resin, 2 surfaces, posterior permanent</td>
<td>$55</td>
<td></td>
</tr>
<tr>
<td>Resin, 3 or more surfaces, posterior permanent</td>
<td>$66</td>
<td></td>
</tr>
<tr>
<td>Prefab stainless steel crown primary</td>
<td>$92</td>
<td></td>
</tr>
<tr>
<td>Prefab stainless steel crown permanent</td>
<td>$103</td>
<td></td>
</tr>
<tr>
<td>Prefab resin crown</td>
<td>$87</td>
<td></td>
</tr>
<tr>
<td>Pin retention, per tooth, in add. to restoration</td>
<td>$13</td>
<td></td>
</tr>
<tr>
<td>Pulp cap direct</td>
<td>$17</td>
<td></td>
</tr>
<tr>
<td>Vital pulpotomy</td>
<td>$52</td>
<td></td>
</tr>
<tr>
<td>Root canal therapy anterior</td>
<td>$211</td>
<td></td>
</tr>
<tr>
<td>Root canal therapy bicuspid</td>
<td>$285</td>
<td></td>
</tr>
<tr>
<td>Root canal therapy molar</td>
<td>$370</td>
<td></td>
</tr>
<tr>
<td>Apicoectomy anterior</td>
<td>$155</td>
<td></td>
</tr>
<tr>
<td>Apicoectomy, bicuspid first root</td>
<td>$155</td>
<td></td>
</tr>
<tr>
<td>Apicoectomy, molar first root</td>
<td>$155</td>
<td></td>
</tr>
<tr>
<td>Apicoectomy, per tooth each additional root</td>
<td>$197</td>
<td></td>
</tr>
<tr>
<td>Gingivectomy, gingivoplasty per quadrant</td>
<td>$259</td>
<td></td>
</tr>
<tr>
<td>Gingivectomy, gingivoplasty per tooth</td>
<td>$104</td>
<td></td>
</tr>
<tr>
<td>Periodontal scaling and root planing per quadrant</td>
<td>$78</td>
<td></td>
</tr>
<tr>
<td>Replace missing or broken teeth or denture</td>
<td>$31</td>
<td></td>
</tr>
<tr>
<td>Repair resin denture base</td>
<td>$47</td>
<td></td>
</tr>
<tr>
<td>Repair cast framework</td>
<td>$75</td>
<td></td>
</tr>
<tr>
<td>Repair broken teeth, per tooth or denture</td>
<td>$28</td>
<td></td>
</tr>
<tr>
<td>Reline complete maxillary denture</td>
<td>$99</td>
<td></td>
</tr>
<tr>
<td>Reline complete mandibular denture</td>
<td>$99</td>
<td></td>
</tr>
<tr>
<td>Transitional appliance upper</td>
<td>$246</td>
<td></td>
</tr>
<tr>
<td>Transitional appliance lower</td>
<td>$259</td>
<td></td>
</tr>
<tr>
<td>Nasal prosthesis</td>
<td>$2,036</td>
<td></td>
</tr>
<tr>
<td>Auricular prosthesis</td>
<td>$1,881</td>
<td></td>
</tr>
<tr>
<td>Facial prosthesis</td>
<td>$3,408</td>
<td></td>
</tr>
<tr>
<td>Obturator (temporary)</td>
<td>$663</td>
<td></td>
</tr>
<tr>
<td>Obturator (permanent)</td>
<td>$1,922</td>
<td></td>
</tr>
<tr>
<td>Mandibular resection prosthesis</td>
<td>$1,660</td>
<td></td>
</tr>
<tr>
<td>Speech aid-pediatric (13 and under)</td>
<td>$2,036</td>
<td></td>
</tr>
<tr>
<td>Speech aid-adult (14 and over)</td>
<td>$2,036</td>
<td></td>
</tr>
<tr>
<td>Palatal augmentation prosthesis</td>
<td>$1,550</td>
<td></td>
</tr>
<tr>
<td>Palatal lift prosthesis</td>
<td>$1,836</td>
<td></td>
</tr>
<tr>
<td>Oral surgical splint</td>
<td>$996</td>
<td></td>
</tr>
<tr>
<td>Extraction, single tooth</td>
<td>$38</td>
<td></td>
</tr>
<tr>
<td>Extraction, each additional tooth</td>
<td>$35</td>
<td></td>
</tr>
<tr>
<td>Root removal, exposed roots</td>
<td>$41</td>
<td></td>
</tr>
<tr>
<td>Surgical removal of erupted tooth</td>
<td>$72</td>
<td></td>
</tr>
<tr>
<td>Removal of impacted tooth (soft tissue)</td>
<td>$98</td>
<td></td>
</tr>
<tr>
<td>Removal of impacted tooth (partially bony)</td>
<td>$138</td>
<td></td>
</tr>
<tr>
<td>Removal of impacted tooth (completely bony)</td>
<td>$165</td>
<td></td>
</tr>
<tr>
<td>Removal of impacted tooth (comp. bony or unusual)</td>
<td>$171</td>
<td></td>
</tr>
<tr>
<td>Surgical removal of residual tooth roots</td>
<td>$83</td>
<td></td>
</tr>
<tr>
<td>Oroantral fistula closure</td>
<td>$104</td>
<td></td>
</tr>
<tr>
<td>Alveoplasty in conjunction with extraction per quadrant</td>
<td>$78</td>
<td></td>
</tr>
<tr>
<td>Alveoplasty not in conjunction with extraction per quadrant</td>
<td>$78</td>
<td></td>
</tr>
<tr>
<td>Excision of benign tumor</td>
<td>$67</td>
<td></td>
</tr>
<tr>
<td>Incision and drainage of abscess (introral)</td>
<td>$52</td>
<td></td>
</tr>
<tr>
<td>Incision and drainage of abscess (extroral)</td>
<td>$62</td>
<td></td>
</tr>
<tr>
<td>Removal of foreign body</td>
<td>$155</td>
<td></td>
</tr>
<tr>
<td>Suture of recent small wound</td>
<td>$52</td>
<td></td>
</tr>
<tr>
<td>Frenulectomy</td>
<td>$129</td>
<td></td>
</tr>
<tr>
<td>Removable appliance therapy</td>
<td>$362</td>
<td></td>
</tr>
<tr>
<td>Fixed appliance therapy</td>
<td>$259</td>
<td></td>
</tr>
<tr>
<td>Palliative visit (treatment of oral pain)</td>
<td>$21</td>
<td></td>
</tr>
<tr>
<td>Intravenous sedation</td>
<td>$122</td>
<td></td>
</tr>
<tr>
<td>Hospital call</td>
<td>$52</td>
<td></td>
</tr>
</tbody>
</table>

Section 6. Oral Surgeons. An oral surgeon shall be treated in the same manner as a physician for reimbursement purposes, and shall be subject to the terms and conditions of payment established [shown] in 907 KAR 3:010.

Section 7. [6.] Third-party Liability. [Medicaid shall be the payor of last resort.] Nonduplication of payments and third-party liability shall be in accordance with [governed] by 907 KAR 1:005.

Section 8. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

DENNIS BOYD, Commissioner
JIMMY D. HELTON, Secretary
APPROVED BY AGENCY: September 15, 2000
FILED WITH LRC: September 15, 2000 at 10 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Physical Health
(As Amended at ARRS, November 14, 2000)

907 KAR 1:790. Medicaid service category expenditure information.

RELATES TO: KRS Chapter 45A, 304.17A, 304.38, 42 CFR 440.230, 41 Subpart B, 42 USC 1396d(r), 1396u-2
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 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. 2000 Ky. Acts ch. 549, Part IX, 22., g., requires the department to promulgate an administrative regulation to establish requirements for the reporting of Medicaid Service Category Expenditure Information. This administrative regulation establishes the provisions relating to Medicaid service category expenditure information for which a managed care organization and the Region 3 Partnership shall report expenditures to the department.

Section 1. Definitions. (1) "BBA" means the Balanced Budget Act of 1997 as amended and codified under 42 USC 1396u-2.
(2) "Department" means the Department for Medicaid Services or its designated agent.
(3) "MCO" means the risk-bearing managed care organization that provides physical or behavioral health services through provider networks on a prepaid capitated basis as either an HMO or a PSN.

(4) "Partnership" means a legal entity that satisfies the requirements of 907 KAR 1:705, Section 5, and while under contract with the department, in accordance with KRS Chapter 45A, agrees to provide or arrange for the provision of health services to Medicaid eligible members on a prepaid capitation payment basis.


(2) A category of Medicaid service reporting requirement shall pertain to a provider who has a managed care contract through one (1) of the following:

(a) A Section 1115 Waiver of the Social Security Act;

(b) The Regional Partnership; or

(c) A BBA state plan amendment MCO.

(3) The following categories of service shall be reported to the department:

(a) Inpatient hospital;

(b) Physicians;

(c) Nursing facilities;

(d) Outpatient hospital;

(e) Home health;

(f) Durable medical equipment (DME);

(g) Family planning;

(h) Early and periodic screening, diagnosis and treatment (EPSDT) screens;

(i) Early and periodic screening, diagnosis and treatment (EPSDT) related;

(j) Laboratories;

(k) Dental;

(l) Nonemergency transportation;

(m) Ambulance;

(n) Vision;

(o) Hearing;

(p) Primary care center or federally-qualified health clinic (FQHC);

(q) Rural health clinic;

(r) Qualified Medicare beneficiaries (QMB);

(s) Nurse practitioner or midwife;

(t) Intermediate care facility for mental retardation (ICF-MR);

(u) Pharmacy;

(v) Chiropractic services;

(w) Community mental health centers;

(x) Mental hospital;

(y) Psychiatric residential treatment facilities (PRTF);

(z) Renal dialysis;

(aa) Podiatry;

(bb) Supports for community living (SCL);

(cc) Ambulatory surgical care center;

(dd) Home and community based services;

(ee) Adult day care;

(ff) Model waivers;

(gg) Hospice;

(hh) Preventive;

(ii) Children with special health care needs;

(jj) Targeted case management - emotionally disturbed child;

(kk) Targeted case management - mentally ill adults;

(ll) Other lab or x-ray;

(mm) Nurse anesthetist;

(nn) Title V - disability determination services (DDS);

(oo) School-based services;

(pp) Early intervention - First Steps;

(qq) Brain injury;

(rr) Impact Plus;

(ss) Health Access Nurturing Developmental Services (HANDS);

(tt) Home care waiver;

(uu) Personal care assistance waiver;

(vv) Kentucky Children's Health Insurance Program (CHIP);

(ww) Empower transportation; and

(xx) Drug rebate.

(3) Other categories shall be added as necessary in accordance with department expenditures in order to meet the reporting requirements of 2000 Ky. Acts ch. 549, Part IX, 22., g.

DENNIS BOYD, Commissioner

JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: August 31, 2000
FILED WITH LRC: September 13, 2000 at 3 p.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Children's Health Programs
(As Amended at ARRS, November 14, 2000)


RELATES TO: KRS 194A.030(3), 205.520, 211.690, 42 USC 1396a-d, 1396n(g)
STATUTORY AUTHORITY: KRS 194A.030(3), 205.520(1), 211.690(2)(1)(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet by administrative regulation to comply with any requirement that may be imposed, or opportunity presented by federal or state regulation for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes requirements for coverage and payment for Health Access Nurturing Development Services (HANDS) provided through an agreement with the state Title V agency, the Department for Public Health.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agent.

(2) "Title V agency" means the Department for Public Health.

(3) "HANDS" means health access nurturing development services provided in accordance with 902 KAR 4:120.

(4) "Recipient" is defined in KRS 205.8541.

(5) "Partnership" means an entity that meets the criteria established in 907 KAR 1:705, and under contract with the department in accordance with KRS Chapter 45A, agrees to provide, or arrange for the provision of health services to members, on the basis of prepaid capitation payments.

(6) "KenPAC" means the Kentucky Patient Access and Care System which operates as primary case care management system in accordance with 907 KAR 1:520E.

(7) "Managed care organization" means the risk-bearing managed care organization that provides physical or behavioral health services through provider networks on a prepaid basis as either a health maintenance organization or a provider sponsored integrated health care delivery network.

Section 2. Covered Services. (1) Services shall be provided pursuant to an interagency agreement between the department and the Title V agency.

(2) Except for a screening service as established in 902 KAR 4:120, Section 4(1), HANDS services shall be provided to a recipient who meets the eligibility requirements for HANDS as established in 902 KAR 4:120, Section 2.

(3) Medicaid services to be provided shall be the case management services described in 902 KAR 4:120, Section 4(2) through (6).

Section 3. Provider Qualifications and Conditions for Participation. (1) Services shall be provided by the Title V agency:

(a) Directly; or

(b) Indirectly through a subcontract that requires a subcontractor to meet the provisions of 902 KAR 4:120, Section 2.

(2) If a HANDS service is provided to a recipient who is a member of a Medicaid managed care partnership, managed care organization or KenPAC, a provider of service shall coordinate and exchange information with the recipient's primary care provider.

Section 4. Reimbursement. (1) Payments shall be based on the
cumulative cost of providing the service.

(2) An interim rate based on projected cost shall be used with a settlement to cost after the end of the state fiscal year.

(3) A HANDS provider that [which] meets the criteria in 902 KAR 4:120, Section 5(2), shall have on file an approved cost allocation plan.

(4) Interim rates for services provided in accordance with 902 KAR 4:120, Section 4(2) through (5), shall be based on the:
(a) Type of service;
(b) Personnel providing the service;
(c) Amount of time required to provide the service; and
(d) Costs related to providing the service, including:
   1. Contacting other persons in agencies who may be familiar with the family's circumstances;
   2. Telephone contacts; and
   3. Indirect costs, including:
      a. Utilities;
      b. Building space;
      c. Travel expenses; and
      d. Office administration.

(5) An annual cost report shall be submitted to the Department for Medicaid Services within 180 days after the close of the fiscal year.

(6) Interim payments shall be adjusted to actual cost based upon review and acceptance of the cost report by the department.

(7) The provider may submit for consideration an amended cost report for a fiscal year up to twenty-four (24) months after the close of that fiscal year.

DENNIS BOYD, Commissioner
JIMMY D. HELTON, Secretary
APPROVED BY AGENCY: September 14, 2000
FILED WITH LRC: September 15, 2000 at 10 a.m.

CABINET FOR HEALTH SERVICES
Office of Aging Services
(As Amended at AARS, November 14, 2000)

910 KAR 1:240. Certification of assisted living communities.

RELATES TO: KRS 194A.700 to 194A.729, 42 USC 3029
STATUTORY AUTHORITY: KRS [194A.050(1), 194A.050(1), 194A.050(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.707(1) requires the [Office of Aging Services within the] Cabinet for Health Services to promulgate an administrative regulation for the certification of [certify] assisted living communities. This administrative regulation establishes a process related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B.

Section 1. Definitions. (1) "Applicant" means the owner or manager who represents a business seeking initial [certification] or annual certification as an assisted living community.

(2) "Assisted living community" is defined in KRS 194A.700.

(3) "Client" is defined in KRS 194A.700.

(4) "Living unit" is defined in KRS 194A.700.

(5) "Office" means Office of Aging Services as defined in KRS 194A.700.

(6) "Plan" means an assisted living community's written plan for correcting noncompliance with the provisions of KRS 194A.707 or this administrative regulation.

(7) "Cabinet" means Cabinet of Health Services.

Section 2. Certification of Assisted Living Community [Communities]. (1) Representatives of the office conducting certification reviews shall not disclose information made confidential by state or federal law or regulation. A confidential interview [Confidential interview] with a client or access to a client's living unit shall be subject to the client's oral or written consent.

(2) (a) An applicant seeking initial certification for an assisted living community shall submit a completed [an] application at least sixty (60) days prior to the planned opening.

(b) An applicant seeking annual certification of an assisted living community shall apply at least [not less than] sixty (60) days prior to the expiration date of the current certification.

(c) Each applicant [Applicants] shall file an OAS-ALC-1 Assisted Living Community Certification Application, with the Cabinet for Health Services, Office of Aging Services, 276 Eust Main E. Prolate, Frankfort, Kentucky 40621.

(d) The application shall require the following:
   1. [e] The name, address and contact person for the owner and, if applicable, for the management company with primary contractual responsibilities for operating the assisted living community;
   2. [c] The mailing address and physical address of the assisted living community;
   3. [e] A copy of a blank lease agreement and any documents which are incorporated by reference into the lease agreement if filing an initial application or if there has been a significant change in the lease since it was last submitted;
   4. [c] A copy of written material [materials] used to market the assisted living community, including material [materials] that markets a marketable special programming, staffing or training;
   5. If an existing assisted living community is exempt under KRS 194A.721:
      a. [e] If an exemption applies to an existing assisted living community that was under construction on or before July 14, 2000 pursuant to KRS 194A.721.1 A copy of the current building permit;
      b. Evidence of the date when [such] construction was begun; and
      c. The expected date of completion;
      d. [c] The floor plan of the assisted living community identifying the:
         a. [that identifies] The living units;
         b. Central dining;
         c. Laundry facility; and
         d. Central living room; and
   7. [g] A nonrefundable certification fee as established in [puruant to] KRS 194A.707(6).

(3) Within ten (10) days of receipt by the office of a completed application and the appropriate fee, payable by check made out to the Kentucky State Treasurer, the office shall:

(a) Notify the applicant that the assisted living community is certified to operate pursuant to KRS 194A.707(2) or (3);

(b) Begin the certification review process; and

(c) Schedule an on-site visit. [Upon receipt by the office of a completed application and the appropriate fee payable by check made out to the Kentucky State Treasurer, the office shall notify the applicant in writing within ten (10) days that the assisted living community may begin to operate pursuant to KRS 194A.707. The office shall within ten (10) days begin the certification review process and schedule an on-site visit.]

(4) Current copies of required building and life safety code certificates or permits shall be reviewed during the certification review process.

(5) Prior to completing an on-site visit at an assisted living community, an office representative shall schedule and hold a meeting between the assisted living community manager or designee and a representative from the office to discuss the preliminary results of the on-site visit.

(6) The employee orientation and in-service training required by KRS 194A.719 shall be completed within six (6) months of the date of employment.

(7) Compliance and noncompliance with KRS 194A.707 and this administrative regulation shall be documented by the office on the OAS-ALC-2 Assisted Living Communities Certification Check List.

(8) (f) Areas of noncompliance shall be submitted in writing by the office to the assisted living community within ten (10) business days upon completion of the on-site visit. The assisted living community shall submit in writing a plan to the office within ten (10) business days of receipt of notice of noncompliance.

(a) The office shall notify the applicant in writing within ten (10) business days whether the plan is approved or not approved together with the reasons for the action taken.

(b) If the plan is not approved, the applicant shall amend the plan and submit in writing to the office within ten (10) business days of
CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, November 14, 2000)

521 KAR 1:400. Establishment, review, and modification of child support and medical support orders.


STATUTORY AUTHORITY: KRS [194B.170], [194B.050(1)], [205.710—205.800; 205.7665; 405.450;] 405.520, 406.021, 42 USC 651 et seq.; [EO-99-734]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer the Child Support Program in accordance with the provisions of KRS 205.710 to 205.800. This administrative regulation specifies the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall Be Established. (1) A child support and medical support obligation shall be established by:

(a) A court of competent jurisdiction;
(b) An administrative order.

(2) The amount of the obligation shall be:

(a) The amount specified in Section 2(4) of this administrative regulation; or
(b) For a child support obligation administratively established by the cabinet, the amount determined by the child support guidelines contained in KRS 403.212, as computed on:

1. Form CS-71, Worksheet for Monthly Child Support Obligation; or

(3) The amount determined shall be for collection purposes. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case for which child support services are being provided, the cabinet shall use state statute and legal process in establishing the amount of a child support and medical support obligation, including KRS 405.430 and 454.220.

(5) In addition to the deductions as specified in KRS 403.212(2), the deduction for a prior-born child residing with the parent for an administrative or judicially imputed child support obligation, as specified in KRS 403.212(2)(3), shall be determined by:

(a) Applying 100 percent of the income of the parent with whom the prior-born child resides, if:
   1. There is no support order; or
   2. There is a support order but there is no support obligation worksheet; or
   3. A worksheet cannot be obtained; or
   (b) Applying that parent’s portion of the total support obligation as indicated on the worksheet, if:
   1. There is a support order; and
   2. A copy of the child support obligation worksheet can be obtained.

(6) Within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet shall:

(a) Complete service of process; or
(b) Document an unsuccessful attempt to serve process.

(7) If service of process has been completed, the cabinet shall, if necessary:

(a) Establish paternity [a child support obligation];
(b) Establish a child support obligation [paternity]; or
(c) Send a copy of a [any, legal proceeding] to the parties within fourteen (14) days of issuance.

(8) If a court or administrative authority dismisses a petition for
Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or medical support obligation, or both if:
(a) Paternity is not in question;
(b) There is no existing order of support for the child;
(c) The noncustodial parent, or obligor, resides or is employed in Kentucky; and
(d) The noncustodial parent’s or obligor’s address is known.
(2) The cabinet shall determine the monthly support obligation in accordance with the [Kentucky] child support guidelines [guideline] as contained in KRS 403.212, or subsection (4) of this section.
(3) To gather necessary information for administrative establishment, the cabinet shall:
(a) Send to the custodial parent:
   1. A custodial parent information request, CS-133;
   2. A financial questionnaire, CS-65;
   3. [A child care expense questionnaire, CS-132; and
   4. [A medical support questionnaire, CS-136 [verification request].
(b) Send to the nonparental custodian:
   1. A nonparental custodian information request, CS-131; and
   2. A medical support questionnaire, CS-136 [verification request], if appropriate; []
(c) Send to the noncustodial parent, or obligor:
   1. An appointment letter, CS-64;
   2. A financial questionnaire, CS-65;
   3. A child care expense questionnaire, CS-132; and
   4. A medical support questionnaire, CS-136; [verification request.]
(d) Send to the employer of the custodial parent, the nonparental custodian, the noncustodial parent, or obligor, or both if both are employed, a wage information request, CS-130; []
(e) Issue an administrative subpoena to utilities and cable companies for financial information of the custodial parent, the noncustodial parent, the nonparental custodian, the noncustodial parent, or obligor, or the employer, pursuant to KRS 205.712(2)(k), (l), (n), [;]
(f) If appropriate, request information from a certified consumer reporting agency as prescribed in KRS 205.7685. An obligor may contest a mistake of fact up to ten (10) days after receiving advance notice of the cabinet’s intent to request for a full credit report.
(4) In a default case, the cabinet shall set the obligation based on the K-TAP standard of need for the child or children as specified in 921 [964] KAR 2:016, Section 8(2)(a).
(5) The child support obligation may be retroactively modified upward, without a showing of change in circumstance, if, within two (2) years of the establishment of the order, evidence of gross income is presented that [which] would have established a higher amount of child support pursuant to the child support guideline.
(6) After the monthly support obligation has been determined, the cabinet shall:
(a) Serve the notice of monthly support obligation, CS-65, upon the noncustodial parent, or obligor, pursuant to [in accordance with] KRS 405.440; and
(b) Provide the other concerned parties with a copy of the notice within fourteen (14) days of the noncustodial parent’s, or obligor’s, refusal or acceptance of the notice.
(7) In accordance with KRS 405.430(6) (f9), the cabinet may modify the monthly support obligation established by the cabinet.
(8) The cabinet shall not administratively modify an [any] obligation that [which] was established by a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) The cabinet shall have a written and publicly available review and adjustment plan for a child support order [orders].
(2) The cabinet may review and adjust an administratively established child support obligation or review and request an adjustment to a judicially-established child support obligation:
(a) Upon the request of the cabinet in a public assistance case [cases]; or
(b) Upon the request of either parent.
(3) A public assistance or [end] nonpublic assistance case shall be reviewed at the request of either parent, nonparental custodian, or another person or entity that may have standing to request a modification subject to the child support order.
(4) Every thirty-six (36) months, the cabinet shall notify each parent subject to an order of the right to request a review.
(5) Within fifteen (15) calendar days of receipt of a review request, the cabinet shall determine if a review should be conducted.
(6) The cabinet shall notify each parent subject to a child support or medical support order of the review thirty (30) days prior to the review commencement.
(7) Within thirty days of receiving a request for review [determining that a review should be conducted], or of locating the nonrequesting parent, the cabinet shall:
(a) Send a notice to each parent that a review will be conducted;
(b) Conduct the review; and
(c) Send a notice of the result; and
(d) Modify or request modification of the order, or determine that there will be no change and notify the noncustodial parent, or obligor and other concerned parties; [;]
(e) Provide the other concerned parties with a copy of the modified notice within fourteen (14) days of the noncustodial parent’s, or obligor’s, refusal or acceptance of the modified notice.]

Section 4. Appeal Procedures. (1) A parent, or another person or entity that has standing or his authorized representative may request and be granted relief by a dispute hearing in accordance with KRS Chapter 138.
(2) A request shall be made to the cabinet:
(a) In writing;
(b) In person; or
(c) Orally, later reduced to writing within the time frames as specified in subsection (3) of this section.
(3) The written request for a dispute hearing shall be considered timely if made:
(a) [Made] Within twenty (20) days of receipt of an initial notice of monthly support obligation; or
(b) [Made] Within twenty (20) days after the parent is notified that the initial support obligation will be upheld; or
(c) [Made] Within twenty (20) days of receipt of a notice of lien;
(d) [Made] Within thirty (33) days of receipt of a modified notice of monthly support obligation; or
(e) [Made] After thirty (30) days but before fifty (50) days have passed since the parent requested a dispute hearing, but the cabinet has not acted upon the request.
(4) If the request is not made within the time period specified in subsection (3) of this section, the parent shall show good cause for the late request. A good cause reason shall include:
(a) A parent being away from home during the entire filing period;
(b) The parent’s inability to read the notice of monthly support obligation;
(c) The parent’s incapacity due to a serious illness during the entire filing period.
(5) The parent or another person or entity having standing to request modification or his authorized representative may review case material pertinent to the reason for the dispute and may present witnesses at the hearing.
(6) If the objection is being filed on an original notice of monthly support obligation, the obligation shall be stayed as specified in KRS 405.450(2).
(7) If the objection is being filed on a proposed modification of an existing administratively established obligation, or a decision that the existing obligation should not be changed, the amount of the existing obligation [on the prior notice] is enforceable and that amount shall be paid while the hearing is pending.
(a) If the parent or another person or entity having standing to request a modification, or his authorized representative prevails, the cabinet shall promptly return to the obligor any overpayment made since the hearing was requested.
(b) If the cabinet prevails, the obligation amount shall be retroactive to the effective date on the notice of monthly support obligation.
(8) The parent or another person or entity having standing to request a modification, or his authorized representative may withdraw the hearing request by writing to the child support office or the Hearing

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Branch in the cabinet [Department for Community-Based Services; Division of Family Support; Hearing Branch].
(3) If the parent or another person or entity having standing to request modification, or his authorized representative fails to appear at the hearing, the Hearing Branch may allow the parent to reschedule the hearing.
(a) The parent or another person or entity having standing to request modification or his authorized representative shall be notified by mail that he has ten (10) days to show good cause for failing to appear or the action shall be dismissed.
(b) If the parent or another person or entity having standing to request modification or his authorized representative does not reschedule or show good cause, the hearing officer shall dismiss the action.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) CS-64, "Noncustodial Parent Appointment Letter", edition 10/96;
(b) CS-65, "Statement of Income and Resources", edition 10/98;
(c) CS-66, "Notice of Monthly Support Obligation", edition 12/00; [(1996 Edition); Cabinet for Families and Children; and]
(d) CEI CS-71, "Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", edition 12/00;
(e) CEI CS-71.1, "Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation Exception", edition 7/00; [and]
(f) CEI CS-65, "Advance Notice of Intent to Request Full Credit Report", edition 10/98;
(g) CS-139, "Wage Information Request", edition 10/96;
(h) CS-131, "Nonparental Custodian Information Request", edition 4/00;
(i) CS-132, "Child Care Expense Verification", edition 11/00;
(j) CS-133, "Custodial Parent Information Request", edition 4/00; and
(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, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner
CHARLES P. LAWRENCE, Attorney
VIOLA P. MILLER, Secretary
APPROVED BY AGENCY; September 13, 2000
FILED WITH LRC; September 14, 2000 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, November 14, 2000)

922 KAR 1:050. Approval of adoption assistance.

RELATES TO: KRS 194B.050(1), 199.555, 199.557, 42 USC 673
STATUTORY AUTHORITY: KRS 194B.050(1), 199.555(10), 199.557(4), 42 USC 673; EO 98-70
NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.555(10) requires the cabinet to establish criteria to be followed for the adoption of special needs children. KRS 199.557 requires the cabinet to implement adoption assistance payments. This administrative regulation establishes [as required by KRS 194B.050(1) and 199.555(10); it serves to set forth] guidelines for the implementation of the law on state funded adoption assistance and federal adoption assistance.

Section 1. Adoption Assistance Criteria. (1) The Secretary of the Cabinet for Families and Children shall make the decision to pay adoption assistance for the adoption of a particular child.
(2) The decision to provide adoption assistance shall be made in the best interest of the child.
(3) Adoption assistance shall be:
(a) Primarily for the benefit of the child and not the adoptive parents; and
(b) Limited to a special needs child.
(4) A special needs child shall include a child for whom [an] adoptive placement without financial assistance is unlikely because the child:
(a) Has a physical or mental disability;
(b) Has an emotional or behavioral disorder;
(c) Has a recognized risk of physical, mental or emotional disorder;
(d) Is a member of a sibling group in which the siblings are placed together;
(e) Has had previous adoption disruption or multiple placements;
(f) Is an African American child two (2) years old or older; or
(g) Is age seven (7) or older and has a significant emotional attachment or psychological tie to his foster family and the cabinet has determined that it would be in the child's best interest to remain with the family. [Home is difficult to find because of:
(a) Age;
(b) A sibling group of three (3) or more children;
(c) A physical disability;
(d) A mental condition;
(e) An emotional problem requiring counseling;
(f) Physical or sexual abuse; or
(g) A background that includes a mental illness which is hereditary in nature and the future impact is documented by a genetic evaluation.]

Section 2. Eligibility. (1) A child considered for state-funded adoption assistance shall:
(a) Be committed to the Cabinet for Families and Children; and
(b) Not have a parent with a legal claim to his custody.
(2) A child considered for federal adoption assistance shall:
(a) Meet the eligibility criteria established in 42 USC 673 at the time the adoption proceedings are initiated; and
(b) Not have a parent with a legal claim to his custody.

Section 3. Parental Standards. Parents receiving a child eligible for adoption assistance shall meet the same standards as those applied to other adoptive applicants.

Section 4. Adoption Agreement. (1) An agreement setting forth the scope and limits of the adoption assistance shall be signed by the adoptive parents and the Secretary of the Cabinet for Families and Children or his designated representative.
(2) The adoption assistance shall:
(a) Begin on the date the order of adoption is entered; and
(b) Continue until the child reaches:
1. The age of majority;
2. Age nineteen (19), if enrolled in a state or federal educational program; or
3. Age twenty-one (21), if disabled and receiving supplemental security income and enrolled in a state or federal educational program.
(3) If there is a change in the family situation or the needs of the child, the adoption assistance may be changed accordingly.
(4) The adoption assistance specified on the OOH-1258, Adoption Assistance Agreement, shall not exceed the amount which would be paid for foster care for the same child, including the medically fragile and family treatment home rates established by the Department for Community-Based Services. Adoption assistance may also include:
(a) Payment for extraordinary medical expense [expenses] related to the child's special needs that:
1. Existed prior to the adoption; and
2. Are not reimbursable by another source; or
(b) Nonrecurring adoption expense [expenses] incurred in the adoption of a child who is considered a special needs child.
(5) An adoptive parent who receives the:
(a) Advanced rate shall meet the annual requirement established in [pursuant to] 922 KAR 1:353, Section 18(4)(c);
(b) Medically fragile rate shall meet the annual requirement established in [pursuant to] 922 KAR 1:353, Section 6(5); or
(c) Family treatment home rate shall meet the annual requirement
established in [pursuant to] 922 KAR 1:350, Section 7(5).

(5) If the amount of adoption assistance is greater than the special needs rate, at each agreement renewal there shall be:
(a) A review of the child's needs to determine if the child would receive the higher rate, if still in foster care; and
(b) Verification that the adoptive parents meet the same training requirements as foster parents to receive the higher rate.

(6) The adoption assistance shall not be changed by a move by the adoptive parents out of the state or country.

Section 5. Annual Family Contact. Annual contact with the adoptive family shall be made by mail or home visit to determine if the level of adoption assistance continues to be appropriate to the needs of the child.

Section 6. Assistance Limitation. The number of adoption assistance cases shall be limited by available funds for the adoption assistance program.

(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.

DIETRA PARIS, Commissioner
VIOLA P. MILLER, Secretary
APPROVED BY AGENCY: September 12, 2000
FILED WITH LRC: September 13, 2000 at noon
KENTUCKY BOARD OF DENTISTRY (Amendment)

201 KAR 8:410. Biennial fee schedule and registration.

RELATES TO: KRS 313.080(1), (3), 313.305(1), (3), 1998 Ky. Acts ch. 556
STATUTORY AUTHORITY: KRS 313.080(1), (3), 313.305(1), (5)
NECESSITY, CONFORMITY, AND FUNCTION: KRS 313.080(1)
and (3) requires each dentist to register with the board biennially and pay a license fee. KRS 313.305(1) and (3) imposes a similar duty on dental hygienists. This administrative regulation establishes [sets] the amount of the fee and prescribes the form to be used to register.

Section 1. Fee Schedule. (1) Renewal of dental license - [ninety (90) dollars for the year 1999; Beginning in 2000] $180 for each biennial license period.
(2) Renewal of dental hygiene license - seventy (70) dollars per biennial license period.

Section 2. Registration.—(1) A dentist or dental hygienist shall register with the board biennially as required by KRS 313.080(1) and 313.305(1).
(2) Registration shall be made on the:
[1] (a) Application to Renew Kentucky Dental License [for 1999];

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application to Renew Kentucky Dental License", Kentucky Board of Dentistry; and
(b) "Application to Renew Kentucky Dental Hygiene License", Kentucky Board of Dentistry.
(2) This material [it] may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

DARLENE SAND-WALL, President
APPROVED BY AGENCY: November 13, 2000
FILED WITH LRC: November 15, 2000 at 11 a.m.
PUBLIC HEARING: A public hearing on this proposed amended administrative regulation shall be held on December 27, 2000, at 2 p.m., local time, at the Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify the board in writing by December 18, 2000, five workdays prior to the hearing, of their intent to attend. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 to: Gary Munsee, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223, phone (502) 423-0573, fax (502) 423-1239.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Gary Munsee
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the amount of the fee and prescribes the form to be used to register.
(b) The necessity of this administrative regulation: Statute requires the board to establish these fees.
(c) How this administrative regulation conforms to the content of the authorizing statutes: Meets statutory requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will establish the fee that is required 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: By eliminating the need to put dates in the regulation concerning renewal forms.
(b) The necessity of the amendment to the administrative regulation: This would eliminate needless work by the board to promulgate regulations each or every other year.
(c) How the amendment conforms to the content of the authorizing statutes: The intent of the law stated in the corresponding statutes would still be carried out.
(d) How the amendment will assist in the effective administration of the statutes: This proposed amendment change will help the staff at the Kentucky Board of Dentistry by not having to promulgate regulations each year or every other year.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This would affect 2800 dentists and 1700 dental hygienists that renew their license biennially.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this amendment: The groups listed above would not be affected at all since this would be a just a change in the regulation. The groups would still renew their license in the same manner they do at this time.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative amendment: None
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative amendment: No increase in fees will be necessary.
(8) State whether or not this administrative regulation establishes and fees or directly or indirectly increases any fees: This proposed amendment would not establish or increase any fees.
(9) Is tiering applied? No. The same standards govern all persons within the appropriate section of the regulation.

KENTUCKY BOARD OF MEDICAL LICENSURE (Amendment)

201 KAR 9:021. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees.

RELATES TO: KRS 311.530 to 311.620, 311.990, 311.271
STATUTORY AUTHORITY: KRS 311.565, 311.571
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.571(1) and (2) require the board to promulgate administrative regulations to implement those provisions regarding applicants for medical and osteopathic licenses. This administrative regulation establishes the required duration of prescribed courses of postgraduate training for those applicants. KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the administrative regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this administrative regulation is to establish standards for approval of medical and osteopathic schools, colleges and universities in regard to the issuance and renewal of licenses and permits to practice medicine or osteopathy in the Commonwealth. The further purpose of this ad-
ministrative regulation is to assure that physicians obtain sufficient postgraduate training to enable them to practice with competency within the Commonwealth.

Section 1. (1) Except as provided by subsection (2) of this section:
(a) A license or permit shall not be issued by the board or retained by a licensee if an applicant or licensee has failed to provide the board proof that he is a graduate of a medical or osteopathic school, college, or university that has been approved by the board; and
(b) The requirement for board approval of an educational institution shall not be waived.
(2) An applicant for limited licensure-institutional practice pursuant to KRS 311.571(4) shall be granted a license without prior approval by the board of the medical or osteopathic school, college, or university from which he graduated if he has submitted proof:
(a) Of the educational institution's existence; and
(b) That he is a graduate thereof.

Section 2. Except as provided by Section 4 of this administrative regulation:
(1) A medical or osteopathic school, college, or university located in the United States, its territories or protectorates, or Canada shall be considered approved by the board; and
(2) A license or permit granted by a medical or osteopathic school, college, or university located in the United States, its territories or protectorates, or Canada shall be recognized if written proof is submitted that the educational institution is located in the:
(a) United States, its territories or protectorates, and accredited by the:
   1. Liaison Committee on Medical Education; or
   2. American Osteopathic Association; or
(b) Canada, and approved or accredited by the Canadian Medical Association.

Section 3. Except as provided by Section 4 of this administrative regulation:
(1) A medical or osteopathic school, college, or university located outside the United States, its territories or protectorates, or Canada shall be considered approved by the board, and a license or permit issued by a medical or osteopathic school, college, or university located outside the United States, its territories or protectorates, or Canada shall be recognized, if the educational institution:
(a) Is officially recognized in good standing by the country in which it is located; and
(b) Is registered as a medical school, college, or university in the:
   1. World Health Organization directory; or
   2. World Directory of Medical Schools; and
(c) Possesses a basic course of clinical and classroom medical instruction that is:
   1. Not less than thirty-two (32) months in length; and
   2. Under its direct authority.

Section 4. (1) The board shall deny or revoke its approval of a medical or osteopathic school, college, or university has failed to meet the requirements for approval established by this administrative regulation.
(2) If the board denies or withdraws its approval of a medical or osteopathic school, college, or university, it shall issue an order stating the grounds upon which the denial or approval was based.

Section 5. Except as provided by subsection (4) of this section, the degree of an applicant shall not be recognized unless an applicant has met the requirements established by this section. Except as provided by subsection (4) of this section, clinical clerkships that a medical school located outside the United States, its territories or protectorates, or Canada permits a student to perform in order to satisfy its curriculum's clinical requirements shall be approved if an applicant has established that:
(1) The clinical clerkships he performed were equal in quality and character to the clinical training performed in the United States by students in American medical and osteopathic schools;
(2) The clinical clerkships he performed had been evaluated and approved by the foreign medical school;
(3) Prior to commencement;
(b) As required by the foreign school's established standards for approval of clerkships performed in the United States;
(c) Seventy-five (75) percent of the clerkships performed in the United States were performed in hospitals that:
   (a) Are accredited by the Joint Commission on Accreditation of Hospitals;
   (b) Have residencies in the subject area of the clerkship approved by the Accreditation Council on Graduate Medical Education; and
   (c) Are affiliated with a medical school located in the United States.
(d) The board shall waive the requirements established by subsections (1) through (3) of this section, if an applicant:
   (a) Commenced a clerkship prior to February 12, 1985;
   (b) Has verified that he has:
      1. Satisfactorily completed an approved three (3) year post graduate training program at one (1) hospital or institution; or
      2. Been accepted into, or is currently enrolled, in the second or third year of a postgraduate training program approved by the board.

Section 6. Application of KRS 311.271. The executive director shall recommend for approval by the board the equivalency of premedical or preosteopathic units of study credited by a college or university located outside the United States or Canada on an individual basis.

Section 7. Amount of Postgraduate Training Required. An applicant for licensure shall provide written proof of having completed postgraduate training approved by the board. Pursuant to KRS 311.571(1)(d), an applicant for regular license must have satisfactorily completed at least two (2) years of prescribed courses of postgraduate training approved by the board. However, residents in Kentucky postgraduate training programs accredited by the American College of Graduate Medical Education may receive a resident training license, which shall permit them to practice medicine within the institution or in a setting approved by the postgraduate training program, following:
(1) One (1) year of postgraduate training;
(2) Successful completion of one (1) of the examinations approved under Section 2 of 201 KAR 9.031 or successful completion of one (1) of the combinations of those examinations as approved in Section 1 of 201 KAR 9.031; and
(3) Payment to the board of a fee of seventy-five (75) dollars. The resident training license shall not be issued to a second-year resident without a recommendation by the director of the postgraduate training program and the approval of the board. The secretary may cancel a resident training license at any time, without an evidentiary hearing, for reasons deemed sufficient to him, and who shall cancel it immediately upon direction by the board or upon the board's denial of the holder's application for a regular license.

Section 8. Postgraduate Training Programs Approved by the Board. The following postgraduate training programs shall meet the postgraduate training requirement for licensure:
(1) All postgraduate training programs in hospitals and institutions located in the United States and approved by the Accreditation Council for Graduate Medical Education.
(2) All postgraduate training programs in hospitals and institutions located in Canada.
(3) All postgraduate training programs in hospitals and institutions located in the United States or Canada and approved by the American Osteopathic Association.

Section 9. Fellowship Training in the United States or Canada. The board will consider on an individual basis written proof of satisfactory completion of fellowship training recognized by the board to be of satisfactory quality as substitute for the second or third year of required postgraduate training approved by the board pursuant to this administrative regulation.

DANNY M. CLARK, President
APPROVED BY AGENCY: October 17, 2000
FILED WITH LRC: October 23, 2000 at 10 a.m.
PUBLIC HEARING: A public hearing on the proposed amend-
ment, 201 KAR 9:021, to current administrative statutes and regulations will be held on the 28th day of December, 2000, at 10 a.m. Eastern Time, at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, in writing by December 19, 2000, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you do not wish to attend this hearing, you may submit written comments on the proposed administrative regulation. Send notification of intent to attend the hearing or written comments to: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, Fax: (502) 429-9923.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest, II, General Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does:
(b) The necessity of this administrative regulation:
(c) How this administrative regulation conforms to the content of the authorizing statutes:
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment to the administrative regulation establishes the minimum period of approved postgraduate training necessary to obtain a Kentucky medical license.
(b) The necessity of the amendment to this administrative regulation: The amendment to the regulation was necessary to respond to the amended statute and to provide for consistent postgraduate training requirements for graduates of United States medical schools and graduates of international medical schools.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the regulation is directly responsive to the language of the authorizing statute as amended - KRS 311.571(1)(d) Has satisfactorily completed a prescribed course of postgraduate training of a duration to be established by the board in an administrative regulation promulgated in accordance with KRS Chapter 13A, after consultation with the University of Kentucky College of Medicine, the University of Louisville School of Medicine, and the Pikeville College School of Osteopathic Medicine.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to the regulation will assist in establishing a uniform requirement for licensing of national and international medical school graduates.
(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants for medical and osteopathic licenses who file an application after July 14, 2000. Estimate of 1,123 annual applications for new licensing received by the board for the year 1999-2000.
(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment to the regulation will increase the amount of postgraduate training for national medical school graduates by one year and will reduce the amount of postgraduate training for international medical school graduates by one year, for initial medical licensing.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be some increased administrative cost due to the increase in applications that will be received by international medical graduates, which should be offset by a similar decrease in applications by national medical school graduates.
(b) On a continuing basis: There should be some decrease in costs due to the reduction of requests for waiver of the final year of postgraduate training by international graduates.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Public funds raised through the licensing fees collected by the board.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change if it is an amendment: The board does not expect to request approval for an increase in fees, based upon this amendment to the regulation.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: The amendment does not establish any fees directly or indirectly increase any fees.

KENTUCKY REAL ESTATE COMMISSION
(Amendment)

201 KAR 11:011. Definitions for 201 KAR Chapter 11.
RELATES TO: KRS 324.010(1)(e), 324.046(1), 324.111(1), (2), (3), (4), (5), 324.117(1), (5), 324.160(4)(l), (m) (h)(g), (r), 324.410(1), 324.420(1), (2), (3), (4), (5).
NESSCCESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324.

Section 1. Definitions. (1) "Academic credit hour" means:
(a) One (1) college semester hour; or
(b) Sixteen (16) fifty (50) minute hours of actual classroom attendance.
(2) "Broker" is defined in KRS 324.010(1)(e) and shall not include an individual who:
(a) Is an officer or clerical employee of a broker; and
(b) Is limited to the duties normally assigned to an office or clerical employee, which means that the employee shall not:
1. Contact a consumer regarding the consumer's willingness to buy, sell, or lease real estate;
2. Solicit or accept a listing or offer;
3. Show property;
4. Negotiate a real estate transaction;
5. Disclose information that is:
   a. Available to the broker; and
   b. Not available to the public;
6. Hold himself out to the public as engaged in the business of brokering real estate.
(3) "Contract deposit" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property after:
(a) The offer or counteroffer is accepted; and
(b) An executory contract exists.
(4) [44] "False, misleading, or deceptive advertising" means an advertisement that is prohibited pursuant to KRS 324.117(1) because the advertisement:
(a) Is contrary to fact;
(b) Leads a person to a mistaken belief or conclusion; or
(c) Knowingly made a representation that is contrary to fact.
(4) [65] "Fraud" or "fraudulent dealing" means a material misrepresentation that:
(a) Is:
   1. Known to be false; or
   2. Made recklessly;
(b) Is made to induce an act; and
(c) Causes an act in reliance on the misrepresentation; and
(d) Causes injury.
(5) [66] "Prize" means an item of value that is:
(a) Offered to a prospective purchaser on a condition set forth in the offer to the prospective purchaser; and
(b) Not a complimentary:
   1. Refreshment, including a soft drink or snack, that is offered to
the general public; or
2. Gift that:
   a. Has a value less than $100 (fifty dollars); or
   b. Is given to the purchaser at or after the closing at which the
      purchaser’s purchase of the real estate was consummated; and
   c. Was not offered prior to closing.
(7) "Regular employee" means an employee who:
   (a) Is compensated at a rate that is fixed in advance in writing;
   (b) Does not receive a commission;
   (c) Works exclusively for the owner; and
   (d) Has his total compensation subject to withholding and FICA
     taxes."
(6) "Without unreasonable delay" means within three (3) business
   [two (2) working] days of the creation of an executory contract
   for the sale or lease of real property.

RON K. SMITH, Chairman
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regu-
lation shall be held on December 21, 2000, at 1 p.m., at the Kentucky
Real Estate Commission, Hearing Room, 10200 Linn Station Road,
Suite 201, Louisville, Kentucky 40223. Individuals interested in
being heard at this hearing shall notify this agency in writing by Decem-
ber 14, 2000, five days prior to the hearing, of their intent to attend. If
no notification of intent to attend the hearing is received by that date,
the hearing may be cancelled. This hearing is open to the public. Any
person who wishes to be heard will be given an opportunity to com-
ment 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.
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: Jeffrey Blair, General Counsel, Kentucky
Real Estate Commission, 10200 Linn Station Road, Suite 201, Louis-
ville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair
   (1) Provide a brief summary of:
      (a) What this administrative regulation does: This regulation pro-
          vides definitions utilized throughout KRS Chapter 324 in a separate
          regulation as provided in KRS 13A.222(4)(e).
      (b) The necessity of this administrative regulation: As numerous
          words are utilized throughout KRS Chapter 324 without definition,
          definitions are provided herein.
      (c) How this administrative regulation conforms to the content of
          the authorizing statutes: KRS 324.117(5) mandates the Real
          Estate Commission promulgate an administrative regulation which
          defines false, misleading, or deceptive advertising. KRS 324.281(5)
          authorizes the Real Estate Commission authority to promulgate
          administrative regulations. KRS 324.282 authorizes the Real Estate
          Commission to promulgate administrative regulations to effectively carry out and
          enforce the provision of this chapter (KRS Chapter 324). The definitions
          provided herein for utilization in KRS 324.010(11), 324.046(11),
          324.111(1), (2), (3), (4), and (6), 324.160(4)(a), (m), (n), 324.410, and
          324.420(1), (2), (3), (4), (5) are authorized pursuant to the authority of
          KRS 13A.222, 324.281(5), and 324.282.
      (d) How this administrative regulation currently assists or will as-
          sist in the effective administration of the statutes: Regulation provides
          specific definitions for terms which do not have a singular dictionary
          meaning as indicated in KRS 13A.222(e)(1). Provides basic due proc-
          ess to licensees who must adhere to KRS Chapter 324 as these defi-
          nitions put licensees on notice as to the mandated standard of behav-
          ior.
   (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:
          1. It will increase the value of an item a licensee may provide to a
         consumer at or after closing;
          2. Eliminate the regulatory definition of regular employee;
          3. Eliminates the office worker definition;
          4. It adds language including leases for deposits with regard to the
             definition of without unreasonable delay.
      (b) The necessity of the amendment to this administrative regu-
          lation:
          1. Inflation and market trends mandate an increase in the maxi-
             mum amount obviously $50 does not purchase the same thing today
             as it did when this regulation was enacted there has been broad re-
             quests from licensees to increase the maximum closing gift amount;
          2. "Regular employee" was included with HB 677 which became
             effective July 14, 2000 as this definition is now in a statute, this
             regulation is mute;
          3. A separate regulation shall detail the available activity for unli-
             censed individuals; and
          4. Industry participants have indicated this change is desired and
             neither the Real Estate Commission or any consumer organization
             have expressed any opposition to this change.
      (c) How the amendment conforms to the content of the authorizing
          statutes:
          1. Current statutory exception is amended;
          2. Statute change renders this regulation mute;
          3. No effective change since this information is being moved to
             another regulation; and
          4. Current definition is amended.
      (d) How the amendment will assist in the effective administration
          of the statutes:
          1. Reflects realities of current market, inflation and allows licens-
             ees realistic amount;
          2. Statutory change renders regulation unnecessary;
          3. Separate regulation will clarify ambiguities in this area pursuant
             to suggestion of administrative regulation review committee staff; and
          4. Elaborates on current definition and clarifies requirement under
             the law.
      (3) List the type and number of individuals, businesses, organiza-
          tions or state and local governments affected by this administrative
          regulation: All licensees are affected by these changes.
      (4) Provide an assessment of how the above group or groups will
          be impacted by either the implementation of this administrative regu-
          lation, if new, or by the change if it is an amendment:
          (a) Licensees have actively sought increase in maximum gift
             amount and presumably this will help them do business without
             harming consumers;
          (b) No change;
          (c) No change; and
          (d) Clarifies the definition in a beneficial manner for licensees and
             consumers.
      (5) Provide an estimate of how much it will cost to implement this
          administrative regulation:
          (a) Initially: No new cost anticipated.
          (b) On a continuing basis: No new cost anticipated.
          (6) What is the source of the funding to be used for the imple-
              mentation and enforcement of this administrative regulation: Not appli-
              cable.
      (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 new fees or funding
          are needed.
      (8) State whether or not this administrative regulation establishes
          any fees or directly or indirectly increases any fees: This regulation
          does not directly of indirectly establish or increase any fees.
      (9) TIERING: Is tiering applied? Tiering is not applied to this
          amendment. The increase in value for a closing gift allows all licen-
          sees an increase in how much maybe spent on these gifts. All licen-
          sees are benefited by this change as no licensee must give a closing
          gift, but this amendment allows the licensee the discretion to do so.
          This amendment imposes no burden on any licensee. Licensee input
          and review by a committee of real estate attorneys and approved by
          the Real Estate Commission and industry groups initiated the inclusion
          of "lease" within the deposit requirement. All felt that an equal applica-
          tion of the regulation mandated leases be included. The "regular em-
          ployee" deletion was mandated by statute and therefore is beyond the

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scope of-tiering. On the suggestion of the Administrative Regulation Review Subcommittee Staff, the information regarding "office employee" shall be placed in a separate regulation. Tiering is not applied since the information is removed and this does not invoke tiering.

KENTUCKY REAL ESTATE COMMISSION
(Annexment)

201 KAR 11:040. Contracts to contain financing provisions.

RELATES TO: KRS 324.160(4)(w)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282 [Chapter 49A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations. This administrative regulation establishes licensee standards pursuant to KRS 324.160(4)(w). [To inform and set certain standards for the licensees and to protect the public.]

Section 1. All contracts providing for the purchase of property shall specifically set forth the [exact] manner in which the purchase shall be financed.

Section 2. The [exact] amount of any encumbrance and whether same is to be underwritten by the seller or a commercial institution or otherwise shall be set forth [precisely] in the written instrument.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation.

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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:
(a) What this administrative regulation does: Regulation indicates minimum standards when a licensee writes an offer to purchase real estate.
(b) The necessity of this administrative regulation: When writing an offer to purchase real estate, the amount of encumbrance (if any) and the method by which the purchase will be financed are material matters that must be disclosed to allow the purchaser to decide whether to accept or reject the offer.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) authorizes the Real Estate Commission authority to promulgate administrative regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provisions of this chapter (KRS Chapter 324). This regulation provides a minimum standard of care which a licensee must meet pursuant to KRS 324.160(4)(w).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Regulation provides clear standard of care for licensees charged with KRS Chapter 324 compliance.

(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: Removes 2 words from the current regulation (exact and precisely).
(b) The necessity of the amendment to this administrative regulation: Current language imposes an unfair restrictive burden on licensees.
(c) How the amendment conforms to the content of the authorizing statutes: Licensee input and Kentucky Real Estate Commission position reflect this change be mandated.
(d) How the amendment will assist in the effective administration of the statutes: Allows licensees some leeway.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees who write offers or contracts are affected.

(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: Enables licensees to more effectively write offers to purchase.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed.

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

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

(9) TIERING: Is tiering applied? As this change reduces the regulatory impact on all regulated entities, tiering is not needed as no disproportionate impact on any class of entity exists and no class is adversely impacted.

KENTUCKY REAL ESTATE COMMISSION
(Annexment)

201 KAR 11:045. Written offers to be submitted to owner-clin.

RELATES TO: KRS 324.160(4)(w)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282 [Chapter 49A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations. This administrative regulation establishes licensee standards pursuant to KRS 324.160(4)(w). [To inform and set certain standards for the licensees and to protect the public.]

Section 1. Each licensee shall, without [undue] delay, submit all written offers to lease or purchase real estate for which said licensee is agent to his principal or owner-tenant for the decision of said owner-tenant for his acceptance or rejection.

Section 2. Each licensee, who represents a prospective purchaser, shall, without [undue] delay, submit all written offers to lease or purchase real estate from his client, to the owner of such property or to the owner's real estate agent if he is represented by a real estate agent.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road,
VOLUME 27, NUMBER 6 – DECEMBER 1, 2000

Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation provides minimum standards of conduct for a licensee with regard to submission of offers.
(b) The necessity of this administrative regulation: When dealing with a written offer, licensees must submit the offer to the consumer immediately to allow the consumer to decide whether the offer is acceptable. In the real estate industry, often times several offers are submitted nearly simultaneously. Therefore, a seller should be given all offers immediately in order to determine which is most advantageous. If a licensee "holds" or "sits on an offer", the seller may lose the opportunity to accept the offer if another offer is submitted. If a second offer is a less advantageous offer than the first offer (either due to price, financing arrangements, or other conditions) and the seller accepts the second offer, and contracts to sell the property to the bidder, the seller is locked into the second offer. Therefore, all offers should be delivered to the seller immediately to allow the seller to review each and determine which is best.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) authorizes the Real Estate Commission authority to promulgate administrative regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provisions of this chapter (KRS Chapter 324).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation has prevented countless difficulties in the real estate brokerage industry. By requiring all offers be submitted immediately, sellers can evaluate each offer and determine acceptability. Licensees should not determine which offers are most acceptable as the sellers are particularly qualified to determine which offer is most acceptable. A licensee's role may involve counseling regarding individual offers, but the final decision of acceptance rests with the seller.
(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: Removes the word "undue" from the current regulation.
(b) The necessity of the amendment to this administrative regulation: The term "undue" is confusing to licensees and redundant language.
(c) How the amendment conforms to the content of the authorizing statutes: Clarifies regulation and removes unnecessary and redundant language.
(d) How the amendment will assist in the effective administration of the statutes: Clarifies regulation thereby better enabling licensees to understand the regulation and follow its mandates.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees who write offers shall be affected.
(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: Anticipated increased understanding of the regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase is necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established or increased directly or indirectly by this change.
(9) TIERING: Is tiering applied? As this change is designed to remove superfluous and (therefore) confusing language, tiering is not utilized. Regardless of the class of regulated entity, this change will promote clarity of language as mandated by KRS Chapter 13A.

KENTUCKY REAL ESTATE COMMISSION

( Amendment)

201 KAR 11:062. Retention of brokers' records.

RELATES TO: KRS 324.111, 324.160(6), 324.382 [324.115]

STATUTORY AUTHORITY: KRS 324.281(5), 324.282 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out the provisions of this chapter. This administrative regulation establishes broker supervision duties with regard to retention of records. [To inform and set certain standards for the licensee and to protect the public.]

Section 1. All brokers shall preserve for five (5) [four-(4) years following its consummation, records in one (1) file relating to any real estate transaction, which shall include the acquisition of and disposition of any monies, listings and sales contracts, closing sheets, property disclosure forms and agency disclosure forms, and such other pertinent information as the commission may require.]

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation requires brokers to retain specific documents from a real estate transaction for a fixed and certain period of time.
(b) The necessity of this administrative regulation: Following the
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 324. This administrative regulation establishes a broker’s requirements for delivery of documents signed by a party. (To inform and set certain standards for the licensees and to protect the public.)

Section 1. A real estate broker shall immediately (at the time of signing any and all instruments) deliver a copy [duplicate original] of all instruments to all parties executing the same, where such instrument has been prepared by such broker or under his supervision.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair
(1) Provide a brief summary of:
(a) What this administrative regulation does: Regulation requires delivery of copies of all documents when a document is prepared by a licensee.
(b) The necessity of this administrative regulation: Regulation mandates delivery of documents to signators to allow parties personal copies of documents.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) authorizes the Real Estate Commission to promulgate administrative regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provision of this chapter (KRS Chapter 324).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides parties with information which directly affects rights in a timely manner. If questions arise during a transaction, a party should be able to refer to a document copy in their own possession.

(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: Change term "duplicate original" to "copy".
(b) The necessity of the amendment to this administrative regulation: New term is more appropriate description of document.
(c) How the amendment conforms to the content of the authorizing statutes: Clarifies existing regulation.
(d) How the amendment will assist in the effective administration of the statutes: Clarifies existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
(a) Kentucky Real Estate Commission
(b) State agencies
(c) Certain real estate brokers

(4) Provide an assessment of how the above group or groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: Amendment allows use of technology rather than carbons.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Amendment does not establish or increase any fees directly or indirectly.
(9) TIERING: Is tiering applied? Tiering is not applicable as this change provides all licensees a lesser burden. All licensees may now provide a "copy" rather than a "duplicate original". No disproportionate impact on any class of regulated entity should be excluded.

KENTUCKY REAL ESTATE COMMISSION
(Amendment)

201 KAR 11:095. Closing statements[-rental-management agreements].

RELATES TO: KRS 324.160(4)(i), (w) [324.281(5), 324.282]
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations. This administrative regulation establishes licensee standards pursuant to KRS 324.160(4)(w). [To inform and set certain standards for the licensees and to protect the public.]

Section 1. A real estate broker shall furnish a debit and credit type closing statement to a buyer and seller upon closing a real estate transaction if the financial institution or the attorney involved in a real estate transaction fails to furnish a closing statement.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 429-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Jeffrey Blair
(1) Provide a brief summary of:
(a) What this administrative regulation does: Requires brokers to provide closing statements to parties at closings if the financial institution or attorney involved does not do so.
(b) The necessity of this administrative regulation: Parties should be provided an accounting of a real estate transaction at closing. If a financial institution or attorney do not do so, the licensee should provide the statement.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) authorizes the Real Estate Commission authority to promulgate administrative regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provisions of this chapter (KRS Chapter 324).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Regulation ensures accounting of money in a real estate transaction by licensee.
(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: Corrects inaccurate title of regulation.
(b) The necessity of the amendment to this administrative regulation: Current title is inaccurate.
(c) How the amendment conforms to the content of the authorizing statutes: Corrects title that is inaccurate.
(d) How the amendment will assist in the effective administration of the statutes: Removes misleading information from title.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Realistically, affects no one since change is not substantive. However, all licensees are subject to the requirements of this regulation.
(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: No impact as the amendment is not substantive.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding necessary to implement this amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Amendment does not establish or increase any fees directly or indirectly.
(9) TIERING: Is tiering applied? Tiering is not needed as the change is in the title only and has no substantive impact.

KENTUCKY REAL ESTATE COMMISSION
(Amendment)

201 KAR 11:105. Owner's consent and authorization.

RELATES TO: KRS 324.117(4), 324.160(4)(w), (6)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to carry out the provisions of KRS Chapter 342. This administrative regulation establishes certain standards for advertising real estate. [To inform and set certain standards for the licensees and to protect the public.]

Section 1. A real estate broker shall not offer real estate for sale or lease without the consent of the owner. When [publicly] promoting or advertising the real estate to the general public, the broker shall have a written listing agreement signed by the owner.

Section 2. A sign shall not be placed on any property by a real estate licensee [broker] without the written consent of the owner.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road,
Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:
(a) What this administrative regulation does: Regulation requires brokers have written consent of seller prior to offering for sale or lease.
(b) The necessity of this administrative regulation: In the absence of this regulation, any broker could advertise a property without the owner's consent. In the absence of this regulation, a broker could advertise the property even if the owner did not want to sell the property. The written requirement ensures no misunderstanding occurs.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) authorizes the Real Estate Commission authority to promulgate administrative regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provision of this chapter (KRS Chapter 324).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Regulation specifies mandatory duties prior to publicly advertising real estate for sale or lease.

(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: Amendment clarifies advertising requirement when dealing with the general public by removing the term "publicly" and inserting "to the general public". Amendment also requires licensee secure written consent to place a sign on property.
(b) The necessity of the amendment to this administrative regulation: Confusion currently exists among licensees as to this regulation and clarification is needed.
(c) How the amendment conforms to the content of the authorizing statutes: Clarifies standards through language for amendment provides clarity in this area.
(d) How the amendment will assist in the effective administration of the statutes: Clarifies standards through language for amendment provides clarity in this area.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees are affected by this amendment.

(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: Amendment will clarify that in 2 situations (when advertising to the general public and when placing signs on property) written listing agreements are required.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost is anticipated to implement this amendment.
(b) On a continuing basis: No costs is anticipated.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed.

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

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

(9) TIERING: Is tiering applied? Tiering is not needed as all regulated entities contribute to the problem this amendment is designed to address and no disproportionate impact on any class exists. No reasonable criteria exists which would allow tiering that could be uniformly applied. Tiering would not effectively solve any problem the regulation addresses.

KENTUCKY REAL ESTATE COMMISSION
(Amendment)

201 KAR 11:121, Improper conduct.

RELATES TO: KRS 324.010(3), 324.160(4)(f), (l), (m), (o), (w), (v), (y), (7)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations necessary to enforce the provisions of KRS Chapter 324. This administrative regulation establishes behavior considered improper conduct. [To inform and set certain standards for the licensees and to protect the public:]

Section 1. The following shall be improper for any licensed agent:
(1) To accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to such person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services.
(2) To offer, either through advertising, direct contact or by others, to the general public, any prize, money, free gift, rebate or any other thing of value, as an inducement. It shall not be improper conduct to disseminate information:
(a) About the fee or other compensation the licensed agent agrees to charge for his services; or
(b) About inducements offered by the licensed agent's client.
(3) To refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the agent, or with the agent's company, without the written and signed direction of the owner. Nothing herein shall be construed to permit otherwise unlawful discrimination.
(4) To fail to satisfy one (1) or more of the following [set in accordance with a] fiduciary duties owed to the licensee's client:
(a) Loyalty;
(b) Obedience to lawful instructions;
(c) Disclosure;
(d) Confidentiality;
(e) Reasonable care and diligence;
(f) Accounting, [standard toward his client]
(5) To advertise guaranteed sales plan without required disclosure of:
1. Whether a fee is charged for participation;
2. Whether the real estate must meet qualifications for participation;
3. Whether the purchase price under a guarantee of purchase of the owner's real estate will be determined by the licensee or a third party; and
4. Whether the owner of the real estate must purchase other real estate listed for sale by the licensee or his designee.

(b) "Guaranteed sales plan" means an offer or solicitation:
1. To guarantee the sale of an owner's real estate; or
2. To guarantee the purchase of the owner's real estate if the owner's real estate is not sold by the broker (licensee).
(c) "Required disclosure" means:
1. In print advertising, that the disclosure shall be in letters at least twenty-five (25) percent the size of the largest letters in the advertisement; and
2. In radio advertising, that the disclosure shall be verbal and
clearly understandable; and
3. In television advertising, that the disclosure shall:
a. Be verbal and clearly understandable; or
b. Be written appearing on the screen at least three (3) seconds for the first line of lettering and one (1) second for each additional line of lettering and in letters:
   (i) Which are eighteen (18) video scan lines in size for letters which are all upper case; or
   (ii) Which are twenty-four (24) video scan lines in size for upper case capitals when upper case capitals and lower case letters are used.
(6) To violate a statute or administrative regulation governing brokers, sales associates, or real estate transactions.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation defines "improper conduct" as indicated in KRS 324.160(4)(u)
(b) The necessity of this administrative regulation: The regulation provides due process protections to licensees by notifying them of acceptable standards.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation specifically details what activity constitutes "improper conduct" as indicated in KRS 324.160(4)(u).
(d) How this administrative regulation directly assists or will assist in the effective administration of the statutes: The regulation provides licensees duties regarding acceptable conduct. The regulation provides acceptable behavior with regard to inducements, closing gifts, fiduciary duties, and guaranteed sales plans. These scenarios are part of the day-to-day reality of real estate brokerage. Without this regulation, licensees would not have a source for guidance.
(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:
1. Includes leases in the provisions;
2. Clarifies licensees must meet fair housing requirements;
3. Details specific fiduciary duties; and
4. Changes term "licensees" to "broker".
(b) The necessity of the amendment to this administrative regulation:
1. Leases should be subject to the same requirements as sales;
2. Clarification sought with regard to fair housing requirements;
3. No where in the license law are fiduciary duties specifically detailed and therefore licensees do not understand what these requirements are; and
4. Pursuant to common law only a broker could offer a guaranteed sales plan.
(c) How the amendment conforms to the content of the authorizing statutes:
1. Leases are subject to Real Estate Commission jurisdiction pursuant to KRS Chapter 324;
2. Industry groups seek clarification on this issue as federal law and state law must each be followed;
3. Fiduciary duties are detailed specifically to provide licensees full notice of the laws requirements; and
4. Language is clarified to prevent misunderstanding with regard to this issue.
(d) How the amendment will assist in the effective administration of the statutes:
1. Clarifies potential ambiguity in the law;
2. Clarifies potential ambiguity in the law;
3. Details specific duties that already exist in the law but which are not specifically listed in the law; and
4. Clarifies potential ambiguity in the law.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees are affected by the amendment.
(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: Amendments primarily serve to clarify several ambiguities in the regulation therefore it is anticipated licensees will become better informed as to the laws requirements.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost anticipated to implement the amendments.
(b) On a continuing basis: No cost anticipated.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed to implement or enforce the amendment.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No 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: This amendment does not establish or increase any fees directly or indirectly.
(9) TIERING: Is tiering applied? Tiering was not applied as a legal review committee of attorneys, the Real Estate Commission, and industry representatives all support the changes. The addition of "leases" was felt appropriate as disclosure of referral fees was deemed appropriate in this situation. The duties detailed in the regulation apply equally to all real estate licensees acting as fiduciaries. No disproportionate impact on any class of regulated entities exist and no class should be excluded. The inclusion of "broker" for "licensee" in the guaranteed sales person language affects all licensees equally who offer guaranteed sales programs. As very few offer such programs, this change realistically affects a very small number.

KENTUCKY REAL ESTATE COMMISSION
(Amendment)

201 KAR 11:135. Salesman’s obtaining broker’s license.

RELATES TO: KRS 324.045, 324.046(3), 324.160(4)(a), (v)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282 [Chapter 19A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes standards when filing a sworn statement to the Real Estate Commission. To inform and set certain standards for the licensees and to protect the public.

Section 1. Any affidavit found to have misrepresented facts in any [their] sworn statement shall be subject to disciplinary proceedings by the commission and criminal penalties for perjury.
VOLUME 27, NUMBER 6 – DECEMBER 1, 2000

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to hear at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:
   (a) What this administrative regulation does: Allows the Real Estate Commission to pursue discipline if an applicant commits perjury in a sworn affidavit.
   (b) The necessity of this administrative regulation: Perjured affidavits to the Real Estate Commission should produce license discipline.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: Provides a regulation which details remedy if licensee provides perjured affidavit. Provides notice to licensees about standard of behavior.
   (d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: As indicated above, provides specific notice to licensees of prohibited behavior and potential consequences.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: Changes "their" to "any."
   (b) The necessity of the amendment to this administrative regulation: Language clarification needed.
   (c) How the amendment conforms to the content of the authorizing statutes: Clarifies potentially confusing and ambiguous language in the regulation.
   (d) How the amendment will assist in the effective administration of the statutes: Amendment will remove inappropriate term and substitute appropriate term.
   (e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees filing statements with the Kentucky Real Estate Commission are affected by the change.

(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: Licensees are impacted only to the affect that the regulatory language is clarified.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: Estimated no cost to implement.
   (b) On a continuing basis: Estimated no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed to implement the 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 necessary to implement.

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

(9) TIERING: Is tiering applied? Tiering was not applied as all licensees submitting sworn statements to the Real Estate Commission should provide truthful information. This produces no disproportionate impact on any class and there is no reasonable criteria to exempt any class.

KENTUCKY REAL ESTATE COMMISSION
(Amendment)

201 KAR 11:145. Salesmen’s duties when terminating affiliation [employment] with broker.

RELATES TO: KRS 324.019(14), 324.160(4)(j), (v), 324.310
STATUTORY AUTHORITY: KRS 324.281(5), 324.282 [Chapter 153A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce KRS Chapter 324. This administrative regulation establishes requirements when an associate ends his affiliation with a broker. [To inform and set certain standards for the licensees and to protect the public.]

Section 1. Unless there is a written contract stipulating otherwise, a real estate salesman shall, upon termination of his affiliation [employment] with a real estate broker, forthwith turn over to such broker any and all listing information obtained during his affiliation [employment] whether such information was originally given to him by his broker [employer] or copied from the records of such [employing] broker or acquired by the salesman during his affiliation [employment].

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to hear at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:
   (a) What this administrative regulation does: Requires an associate licensee turn all listing information to his broker upon conclusion of the associate’s affiliation with the broker.
   (b) The necessity of this administrative regulation: Associates must affiliate with brokers pursuant to statute. Associates accumulate information regarding listing contracts and listing clients during the affiliation. Unless otherwise agreed in writing, the associate should turn over the listing information as the principal broker is the sole broker responsible for the operation of the company (KRS 324.010(4) and the associate performs all brokerage activity under the supervision of the broker (KRS 324.010(7)).
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) authorizes the Real Estate Commission authority to promulgate administrative regulations. KRS
324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provision of this chapter (KRS Chapter 324).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation indicates procedure to be followed at conclusion of affiliation with a broker thereby avoiding damage to consumer.

(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: Amendment changes term "employment" to "affiliation" and terms "employer" to "broker" and removes "employing".

(b) The necessity of the amendment to this administrative regulation: Current regulation implies employer employee relationship between broker and associate while the appropriate term under the law is broker and associate and affiliation is the appropriate term of the relationship under the law.

(c) How the amendment conforms to the content of the authorizing statutes: Amendment reflects actual status of legal relationship between broker and associate.

(d) How the amendment will assist in the effective administration of the statutes: Removes inaccurate terminology.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In reality, this amendment does not impact any licenses. However, all licenses are subject to the regulation and the clarification provides appropriate terminology and replaces inaccurate terminology.

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

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

(a) Initially: No cost to implement this amendment.

(b) On a continuing basis: No cost to implement amendment.

(h) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed for implementation and enforcement.

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

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

(k) TIERING: Is tiering applied? Tiering is not required as this change is primarily one of clarification and precision. This change does not disproportionately impact any class or entity.

KENTUCKY REAL ESTATE COMMISSION

(Amendment)

201 KAR 11:170. Private school approval.

RELATES TO: KRS 324.010,(7), (8) [(f)(g)], 324.046(1), (2)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282
authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7) and (8) [(f)(g)] authorizes the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school. This administrative regulation establishes the requirements and application procedures for an approved real estate school.

Section 1. (1) To apply for certification as an approved real estate school or to renew certification, a real estate school shall submit a:

(a) Completed Application for an Approved Real Estate School, including the information required concerning curriculum, instructors, and educational materials and policies;

(b) Copy of the Certificate of Approval from the State Board for Proprietary Education or Kentucky Department of Education, if applicable;

(c) Sample schedule to outline how a course will be presented;

(d) Completed course outline for each course, which shall include:

1. A Real Estate Instructor Application for each instructor, as required by 201 KAR 11:175;

2. A copy of a contract or agreement signed by the student which outlines the class schedule, grading system, and attendance requirements;

3. A copy of the written material, other than the textbook or real estate license law manual, which the instructor will use in the classroom;

(e) Sample copy of a school brochure or information sheet promoting the school;

(f) Copy of legal documentation required to support an answer, if applicable; and

(g) A sample copy of an official transcript from the school.

(2) Approved real estate schools shall include a statement in the school application that a criminal conviction may prevent an applicant from qualifying for licensure under KRS 324.045. Failure to do so may result in suspension of an approved school's certification until the information is included in the application.

(3) An approved school shall notify the commission within ten (10) days of a material change in the information originally furnished on the application or in an attachment to the application.

(4) [(9)] A renewal application shall be submitted by November 1 of each year.

Section 2. The curriculum for an approved real estate school shall:

1. Include a minimum of three (3) academic hours per course;

2. Be conducted for a maximum of no more than seven (7) hours during a twenty-four (24) hour period; and

3. Consist of a course containing the topics listed in the Topics Prescribed by the Real Estate Commission.

Section 3. An approved real estate school shall not:

1. Advertise in conjunction with the business of a broker or a brokerage firm; or

2. Discuss, induce, or promote affiliation with a broker or brokerage firm.

Section 4. (1) An approved real estate school shall maintain accurate and permanent records on each student enrolled in a course.

(a) A permanent record shall include each student's record of courses completed or attempted, academic hours awarded, and final grades.

(b) A Certificate of Completion shall be:

1. Included in the permanent records of each student; and

2. Mailed to each student upon completion of a course.

(2) A temporary record shall:

(a) Be maintained for three (3) years; and

(b) Include student attendance records and test scores.

(3) An approved real estate school shall notify the commission within five (5) days of the beginning of a precourse.

Section 5. An approved real estate school shall permit an inspection and monitoring by the commission or its designee to evaluate an aspect of the administration or operation of the school.

Section 6. Private school approval shall be withdrawn if the commission determines that:

1. Information contained on the application or renewal is inaccurate or misleading; or

2. The establishment or conduct of the school is not in compliance with this administrative regulation or the instruction is so deficient as to impair the value of the course. If a school has been given notice of a deficiency under this section, the commission shall give the school an opportunity to correct: the deficiency within thirty (30) days.

Section 7. An effort made directly or indirectly by a school, official or employee, or a person on their behalf to reconstruct the real estate licensing examination or portion of the examination shall result in im-
mediate revocation of school approval.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for an Approved Real Estate School", 10/97 edition, Kentucky Real Estate Commission;
(b) "Course Outline", 10/97 edition, Kentucky Real Estate Commission;
(c) "Certificate of Completion", 10/97 edition, Kentucky Real Estate Commission; and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair
(1) Provide a brief summary of:
(a) What this administrative regulation does: Provides procedure for private school approval other information relevant to private schools which must be approved by the Kentucky Real Estate Commission.
(b) The necessity of this administrative regulation: Pursuant to KRS Chapter 75A, all procedures of a state agency should be detailed in a regulation. This regulation details how the Real Estate Commission approves real estate schools pursuant to KRS 324.010(7).
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and 324.282 allow the Real Estate Commission to promulgate regulations to implement KRS Chapter 324.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides notice and procedure with regard to private school approval.
(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: Amendment requires approved real estate schools provide notice to school applicants that a criminal conviction may prevent licensure.
(b) The necessity of the amendment to this administrative regulation: Numerous instances of applicants not being informed of the potential licensure application problems that occur when an applicant has a criminal conviction record necessitate this change.
(c) How the amendment conforms to the content of the authorizing statutes: Amendment clarifies an approved real estate school's duties under this existing regulation.
(d) How the amendment will assist in the effective administration of the statutes: Amendment should provide applicants notice on this issue prior to paying a school tuition which can be nearly a $800.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approved real estate schools are affected by this amendment.
(f) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Schools will need to amend applications to provide notification to applicants with regard to this issue.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Schools are adding a short addition to a printed application therefore it is anticipated that the cost will be de minims.
(b) On a continuing basis: Schools are adding a short addition to a printed application therefore it is anticipated that the cost will be de minims.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is anticipated to implement or enforce this amendment.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is anticipated to implement this amendment.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not directly or indirectly establish or increase any fees.
(f) TIERING: Is tiering applied? Tiering was not utilized as all approved schools must provide the notification to applicants. There is no reasonable criteria to utilize to not apply the criteria to all members of the class.

KENTUCKY REAL ESTATE COMMISSION

(Amendment)

201 KAR 11:190. Rules of practice and procedure before the Kentucky Real Estate Commission.

RELATES TO: KRS [Chapter 19B] 324.150, 324.151, 324.160, 324.170, 324.200, 324.281(5), (6)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) requires the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license or before suspending or revoking a license. This administrative regulation establishes supplemental administrative hearing procedures for matters before the commission.

Section 1. Complaint Review and Investigation. (1) An aggrieved party shall file a Sworn Statement of Complaint against a licensed real estate sales associate or broker. The complaint shall:
(a) Alleg a prima facie case of specific violation of KRS 324.160. If the commission staff review determines no prima facie case of specific violation is alleged, the aggrieved party shall be given ten (10) days to file a written supplement to the complaint. If the complaint and supplement do not allege a prima facie case of a specific violation of KRS 324.160, the commission staff shall recommend the matter be dismissed by the commission without response from the respondent.
(b) State the basis of the complaint fully and concisely, including the name of the broker or principal broker;
(c) Be notarized by a notary public;
(d) Include a completed damages claimed form, with a copy of each receipt, estimate, or other evidence of damages attached to the report;
(e) Be filed within two (2) years from: 1. Actual knowledge of the cause of action; or 2. The time circumstances would reasonably have put the aggrieved party on notice of the cause of action.
(2) A respondent shall file a Sworn Answer to Complaint if a com-
plaint is filed against him in accordance with the requirements of KRS 324.151(3). The answer shall:
(a) Identify the respondent;
(b) State his responses to the complaint;
(c) Be notarized by a notary public; and
(d) Include a copy of the following documents:
1. Listing contract;
2. Purchase contract;
3. Seller’s disclosure form;
4. Agency disclosure form; and
5. Settlement statement.
(3) A complaint filed with the commission that fails to set forth a prima facie case of violation of KRS 324.160 [legitimate issue] under KRS Chapter 324 shall be dismissed by the commission without further investigation or hearing.
(4) Upon completion of an investigation following the submission of a complaint and answer, the commission shall:
(a) Dismiss the case without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of KRS Chapter 324; or
2. Schedule an administrative hearing pursuant to KRS Chapter 13B, 324.151, and 324.170; and
(b) Notify the complainant and respondent of its decision in writing. The notification shall include a brief statement explaining the commission’s reasons for the decision.
Section 2. Motions. (1) A request for the commission or a hearing officer to take or refrain from taking an action shall be made by an oral or written motion.
(2) A motion shall state the basis for the motion, including a citation to or description of the legal authority in support of the requested action, if applicable.
(3) A party shall be given an opportunity to respond to a motion.
Section 3. Withdrawal of a Complaint. A complainant may withdraw a complaint if:
(1)(a) An answer has not been filed in accordance with KRS 324.151; and
(b) The withdrawal is made within twenty (20) days of the date the complaint was filed; or
(2)(a) There is good cause for the withdrawal; and
(b) The commission approves the withdrawal.
Section 4. Consolidation and Severance. (1) A hearing officer may consolidate cases assigned to his docket upon a finding by the hearing officer that:
(a) There are:
1. Common questions of law or fact; or
2. Identical issues or witnesses; and
(b) Consolidation is appropriate.
(2) A hearing officer may sever consolidated cases or claims in an administrative action upon a finding that the requirements for consolidation established in subsection (1) of this section are not met.
Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) “Sworn Statement of Complaint” 10/00 (798) edition, Kentucky Real Estate Commission; and
(b) “Sworn Answer to Complaint”, 7/98 edition, Kentucky Real Estate Commission; and
(c) “Sworn Supplement to Complaint”, 10/00 edition, Kentucky Real Estate Commission.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.
RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify the agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Jeffrey Blair
(1) Provide a brief summary of:
(a) What this administrative regulation does: Details procedure relative to complainants and respondents for disciplinary complaints filed with the Real Estate Commission.
(b) The necessity of this administrative regulation: Regulation details procedure regarding disciplinary complaints as indicated in KRS Chapter 13A.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) authorizes the Real Estate Commission authority to promulgate administrative regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provision of this chapter (KRS Chapter 324).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Regulation details complaint procedure of Kentucky Real Estate Commission in order to allow all parties notice of the agency’s 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: Details how the Real Estate Commission legal staff will implement a recently enacted statutory amendment.
(b) The necessity of the amendment to this administrative regulation: The statute regarding disciplinary complaints was amended in the 2000 General Assembly in this change it details how the Kentucky Real Estate Commission will implement the change.
(c) How the amendment conforms to the content of the authorizing statutes: The statute regarding disciplinary complaints was amended in the 2000 General Assembly in this change it details how the Kentucky Real Estate Commission will implement the change.
(d) How the amendment will assist in the effective administration of the statutes: The statute regarding disciplinary complaints was amended in the 2000 General Assembly in this change it details how the Kentucky Real Estate Commission will implement the change.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Potentially affects all licensees as all licensees are subject to disciplinary complaints. Also affects consumers filing disciplinary complaints with the Kentucky Real Estate Commission.
(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: Disciplinary complaints that do not allege a prima facie violation of KRS Chapter 324 shall be dismissed without requiring an answer from a real estate licensee. This may prevent licensees from having to hire attorneys and increases associated with that hiring for non meritorious claims.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost to implement this amendment.
(b) On a continuing basis: No cost anticipated.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary to implement this amendment.
- 1514 -
provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change if it is an amendment: No increase on fees or funding will be necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering was not utilized as all disciplinary complaints are subject to the requirements of this regulation amendment. As all licensees are potentially subject to a disciplinary complaint, no reasonable criteria exists to utilize tiering.

KENTUCKY REAL ESTATE COMMISSION
(201 KAR 11:210. Licensing, education, and testing requirements.)

RELATES TO: KRS 324.010, [324.020], 324.040, 324.045(1), (2), (3), 324.046
STATUTORY AUTHORITY: KRS 324.281(5), (6), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282
authorizes the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 342. This administrative regulation establishes standards relative to education, testing, and license application. [For set forth procedures and standards for education requirements, testing, and license applications.]

Section 1. In lieu of proof of high school graduation or a GED diploma, an applicant may submit an official transcript from a United States institution, or from an institution outside of the United States as indicated in Section 2 of this administrative regulation, which indicates completion of a degree program at a post secondary institution, or a transcript from a United States institution, or from an institution outside of the United States as indicated in Section 2 of this administrative regulation, which indicates successful completion of twenty-eight (28) academic semester hours or equivalent from a post secondary institution.

Section 2. If an applicant submits information from a non-united States institution, the diploma or transcript shall be translated by the applicant or the applicant’s representative if the Real Estate Commission requests translation. The applicant shall also submit a notarized letter from the reviewing institution’s representative indicating the school curriculum is equivalent to a GED or high school diploma. If the applicant cannot meet the requirements of this section, he/she shall be required to submit proof of a GED granted by a United States agency or institution.

Section 3. An official transcript is a document imprinted with the institution’s seal, signed by the registrar, and sent directly from the institution to the commission.

Section 4. [201 KAR 11:210. A real estate course shall be one which is designated specifically as a real estate course by an approved or accredited real estate school which offers the course. The academic content for the course shall specifically focus on real estate. The course shall be for academic credit and not a continuing education unit, examination preparation or review, experiential education, or competency testing. Candidates shall not submit completion of the same course or essentially same course twice for licensure credit.

Section 5. Each course for which credit is granted under this section shall be approved or rejected under the following procedure:

(1) A course description from the school catalog, course syllabus, table of contents from text used in the course, or other summary of the course shall be provided to the Real Estate Commission by the applicant prior to approval;

(2) The commission education director shall review the material submitted by the applicant and recommend the commission either grant or reject credit under this section at the Real Estate Commis-
VOLUME 27, NUMBER 6 – DECEMBER 1, 2000

KENTUCKY REAL ESTATE COMMISSION
(Alendment)


RELATES TO: KRS 324.010(7), (8), 324.048(5), 324.085(1), (2), 324.090, 324.281(7)

STATUTORY AUTHORITY: KRS 324.281(5), (7), (8), 324.282

NECESSITY, FUNCTION AND CONFORMITY: KRS 324.281(7) requires an actively-licensed agent, except an agent licensed prior to June 19, 1976, to successfully complete six (6) hours of mandatory continuing education each year as a condition of license renewal and requires that three (3) [two (2)] of the six (6) hours pertain to the study of real estate law. This administrative regulation establishes the requirements relating to continuing education.

Section 1. (1)(a) Except as provided in paragraph (b) of this subsection, an active licensee shall meet the requirements of KRS 324.281(7) by attending a continuing education course sponsored or approved by the commission that meets the requirements established in this section of this administrative regulation.

(b) An active licensee shall attend a commission-approved core course once every four (4) years. The core course shall:

1. Satisfy the licensee's mandatory continuing education requirement for the year in which the course is taken;
2. Be a six (6) hour comprehensive review of the requirements of KRS Chapter 324, 201 KAR Chapter 11, common and federal law relating to real estate, and the standards of practice for a real estate licensee; and
3. Be taken according to the following schedule:
   a. If the licensee's birth month is January, February, or March, the licensee shall take the core course in the first year of a four (4) year cycle.
   b. If the licensee's birth month is April, May, or June, the licensee shall take the core course in the second year of a four (4) year cycle.
   c. If the licensee's birth month is July, August, or September, the licensee shall take the core course in the third year of a four (4) year cycle.
   d. If the licensee's birth month is October, November, or December, the licensee shall take the core course in the fourth year of a four (4) year cycle.

(2) To apply for approval of a continuing education course, a sponsor shall submit:

(a) Completed Continuing Education Course Application, which shall:
1. Include information concerning curriculum, instructors, and educational materials and policies; and
2. Be signed by the sponsor's administrator to indicate compliance with applicable law and the requirements of this administrative regulation;
(b) Copy of the Certificate of Approval from the State Board for Proprietary Education, if the sponsor is:
1. Not an accredited college or university; and
2. Is certified by the State Board for Proprietary Education;
(c) Completed Real Estate Instructor Application for each instructor, as required by 201 KAR 11:175; and
(d) Copy of all advertising or brochures advertising the continuing education course.

(3) To receive approval, an education course shall consist of topics that shall:

(a) Enable a student to better understand the brokerage business; and
(b) serve the public.
(c) A course that is self-motivational in nature shall not be approved.
(d) A course instructor shall:
   a. Be reasonably competent by educational background or work experience;
   b. Have adequate knowledge of the course material; and
   c. Be an "approved instructor" under the prelicensure education requirements established in 201 KAR 11:175.
(e) An education course shall be sponsored by:
   a. An accredited real estate school;
(b) A school that has been given a certificate of approval by the
Kentucky Board of Proprietary Education;
(c) An appropriate governmental regulatory body; or
(d) An approved real estate school.
(7) A sponsor shall:
(a) At least thirty (30) days prior to the scheduling of a continuing
education course, submit to the commission a completed Continuing
Education Schedule that identifies the course provider, course title and
number, instructor, date, time, and location;
(b) The commission education director shall submit the informa-
tion required in paragraph (a) of this subsection to the Real Estate
Commission for approval or rejection of the course.
(c) Give to each attendee listed on the roster a completed Con-
tinuing Education Completion Certificate;
(d) [ee] Within ten (10) days of a continuing education course,
submit to the commission:
1. A completed Continuing Education Attendance Roster, which
shall include the name, address, and Social Security number of each
attendee, in alphabetical order;
2. Each completed Continuing Education Course Evaluation com-
pleted by each attendee listed on the roster; and
3. A completed CE Course Evaluation Transmittal Form;
(e) [dd] Permit monitoring and inspection by the commission; and
(f) [ee] Make the course available to all licensed agents, subject to
space limitations.
(8) An education course shall consist of a minimum of three (3)
two (2) hours. One (1) hour of continuing education shall be allowed
for each fifty (50) minutes of actual attendance.
(9) An escrowed licensee shall not be required to attend a contin-
uing education course. Before a license is changed from escrow to
active, a licensee shall provide the commission with documentation of
the completion of the current calendar year’s continuing education
requirements. Beginning January 1, 1999, if the licensee has not com-
pleted a commission-approved core course in the previous four (4)
years as required by subsection (1)(b) of this section, the core course
shall be the current calendar year’s continuing education re-
quirements for a license changing from escrow to active.
(10) A licensee shall not be required to attend a continuing educa-
tion course during the first calendar year in which he is first licensed in
Kentucky.
(11) An active license shall not be renewed unless the licensee
has complied with the provisions of this administrative regulation.
(12) (a) A licensee shall complete the mandatory continuing educa-
tion requirements of this administrative regulation by December 31 of
each calendar year.
(b) Proof of completion of the mandatory continuing education
requirements shall be submitted to the commission on or before Jan-
uary 15 of the following calendar year.
(c) If a licensee fails to comply with the provisions of paragraphs
(a) and (b) of this subsection, the executive director shall notify him as
soon as practicable on or after January 15 of the [following] calendar
year immediately following the year in which continuing education
requirements were not fulfilled.
(d) A license shall not be cancelled [expired] if a licensee:
1. Places his license in escrow; or
2. Completes the requirements of a delinquency plan that com-
plies with subsection (13) of this section.
(e) A licensee who fails to either place his license in escrow or file the
delinquency plan on or before February 15 immediately following the
year in which continuing education requirements were not fulfilled as
required by subsection (13) of this section shall have his license
cancelled [expired] as of that date.
(13) On or before February 15 of the [following] calendar year
immediately following the year in which continuing education require-
ments were not fulfilled, a licensee shall submit a written delinquency
plan to complete the continuing education requirements for the previ-
ous calendar year.
(a) The delinquency plan shall provide that the continuing educa-
tion requirements for the previous calendar year shall be completed on
or before June 15 immediately following the year in which continuing
education requirements were not fulfilled.
(b) A $200 fine shall be assessed against each licensee who fails to
complete the continuing education requirements of KRS 324.281(7)
by the end of the calendar year in which the hours were required.
(c) If a licensee fails to complete the requirements of the delin-
quency plan on or before June 15, the licensee will be notified of the
deficiency in writing by the commission by July 15.
(d) The Real Estate Commission shall notify all licensees who
failed to meet the requirements of the delinquency plan of the date on
which the Real Estate Commission will conduct a hearing to consider
suspending the licensee’s license for failure to meet continuing edu-
cation requirements and failure to meet the delinquency plan require-
ments. If the Real Estate Commission suspends the license after
hearing, the licensee shall not be allowed to activate his license un-
less, within (90) ninety days of the expiration of the suspension, he:
1. Completes the current years continuing education require-
ments;
2. Submits required documentation to reinstate the license; and
3. Pays all necessary renewal and transfer fees as required by
KRS 324.287.
(e) The Real Estate Commission shall offer licensees who have
failed to meet continuing education requirements and have failed to
meet the delinquency plan conditions the opportunity to enter a final
agreement whereby the licensee pays a fine of $500 and agrees to
take the delinquent educational hours on or before August 31 rather
than be suspended;
(f) If the delinquent licensee fails to enter the agreement to pay
$500 and complete the delinquent hours before August 31, a hearing
shall be held and the licensee’s license shall be suspended for six (6)
months if the Real Estate Commission determines the licensee has
failed to meet the requirements of this section;
(g) If a licensee enters an agreement to pay $500 and to complete
the delinquent hours before August 31 and fails to either pay the fine
or complete the hours, the Real Estate Commission shall notify the
licensee of the date on which the Real Estate Commission will conduct
a hearing to determine whether the licensee has paid the $500 and
completed the delinquent hours before August 31. The Real Estate
Commission shall suspend the licensee’s license if the Real Estate
Commission determines the licensee has failed to meet the require-
ments of this section; and
1. [The licensee shall submit a fee of $200 with his delinquency
plan, as required by KRS 324.690(2);
2. [2] To reinstate a suspended [an expired] license at the conclusion
of the six (6) month [two (2)-year] period, the licensee shall, within
ninety (90) days of the expiration of the suspension:
(a) Complete the current year's continuing education requirements;
(b) Submit required documentation to reinstate the license; [amd]
c. Pay all necessary renewal and transfer fees as required by
KRS 324.287;
(d) Attend a Kentucky Real Estate Commission Core Course and
six (6) hours of continuing education related to the study of real estate
law.
2. [s] If the licensee does not comply with the requirements of
subsection 2 of this paragraph, after ninety (90) days:
[a. The license shall be cancelled [expired]; and
b. The licensee shall meet the requirements for initial licensure, including retaking the examination.
(14) A licensee who places his license in escrow under the provi-
sions of subsection (12) (d) of this section shall not reactivate his li-
cense unless he has:
(a) Completed the current year's mandatory continuing education
requirements; [amd]
(b) Paid the fees [fee] required by KRS 324.287 and under this
administrative regulation; and
(c) Attended the core course as required by subsection (1)(b) of
this section.
(15) The time requirements established in this administrative
regulation may be extended by the commission if:
[a. A true hardship or other good cause clearly warrants relief; and
[b. The request for extension is received [requested] in writing on
or before February 15 [January 30] of the [following] calendar year
immediately following the year in which continuing education require-
ments were not fulfilled or July 1 if the licensee has entered a delin-
quency plan.
(18) Licensees who attend continuing education in another state may receive approval for continuing education courses completed in another state provided:
(a) The regulatory jurisdiction where the continuing education course is held accepts courses held in Kentucky for continuing education credit in the jurisdiction;
(b) The real estate regulatory agency of the state where the course is held approved the course for continuing education;
(c) The course is conducted during the calendar year for which continuing education credit is sought;
(d) The course enables the licensee to better understand the real estate brokerage business;
(e) The licensee submits proof of completion of the out-of-state course to the Kentucky Real Estate Commission through a Course Completion Certificate or other documentation certificate, which indicates course completion. The documentation certificate shall provide the:
   1. Name and residence address of the licensee seeking continuing education credit;
   2. Name of the course for which credit is sought;
   3. Course number if one exists;
   4. Number of hours completed and for which credit is sought;
   5. Continuing education provider’s name;
   6. A signature from a representative of the continuing education provider documenting the licensee’s course attendance for which continuing education credit is sought;
   7. Regulatory jurisdiction where the course is approved for continuing education credit; and
   8. An outline of the specific course for which continuing education credit is sought if the outline is specifically requested by the Kentucky Real Estate Commission.
(b) The completion documentation certificate shall be provided to the Kentucky Real Estate Commission within fourteen (14) days of the licensee’s receipt of the certificate from the regulatory body where the course is approved for continuing education credit.
(c) The licensee seeking continuing education credit for courses not specifically approved by the Kentucky Real Estate Commission shall submit a completed "Kentucky Real Estate Commission Out-of-state Continuing Education Form".
(d) The Kentucky Real Estate Commission may review:
   1. The course completion form or other completion documentation;
   2. The course outline.
   (i) If after review of the course completion form, other completion documentation, or course outline, the Real Estate Commission determines the course does not merit continuing education credit, the Real Estate Commission may deny continuing education credit for the course. The Real Estate Commission shall notify the licensee of this denial and a brief explanation of the reasons for denial.
   (ii) A licensee who teaches an approved continuing education course shall be entitled to:
      1. One (1) hour of credit for each hour of instruction he teaches; and
      2. Two (2) hours credit for preparation for each course he teaches.
   (b) The instructor’s supervisor shall submit a written request for credit to be awarded for teaching a class. The request shall contain the instructor’s name, date and name of course, and the number of hours.
   (c) The instructor shall not receive credit more than once in a calendar year for teaching a specific course.
(19) [179] Hours of instruction in prelicensure real estate education courses shall be credited to the mandatory continuing education requirements:
(a) The licensee shall submit a transcript or course completion certificate for the prelicensure course in order to receive credit toward the continuing education requirements for that calendar year.
(b) An instructor of an approved prelicensure real estate course shall receive credit toward his continuing education requirements. Instructor credit for a prelicensure course shall comply with the requirements for a continuing education course, as established in subsection (17) of this section.
(19) [199] Hours of mandatory continuing education exceeding the amount required shall not be carried forward to the next year’s requirements.
(20) [199] The provisions of this administrative regulation shall not apply to any person licensed by the commission prior to June 19, 1976.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Continuing Education Course Application", 11/97 edition, Kentucky Real Estate Commission;
(b) "Continuing Education Schedule", 11/97 edition, Kentucky Real Estate Commission;
(c) "Continuing Education Attendance Roster", 11/97 edition, Kentucky Real Estate Commission;
(d) "CE Course Evaluation Transmittal Form", 11/97 edition, Kentucky Real Estate Commission;
(e) "Continuing Education Course Evaluation", 11/97 edition, Kentucky Real Estate Commission;[and]
(f) "Continuing Education Completion Certificate", 11/97 edition, Kentucky Real Estate Commission; and
(g) "Kentucky Real Estate Commission Out-of-state Continuing Education Completion Form", 10/00 edition, Kentucky Real Estate Commission.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Jeffrey Blair
(1) Provide a brief summary of:
(a) What this administrative regulation does: Provides requirements related to continuing education and procedure if licensee fails to complete continuing education.
(b) The necessity of this administrative regulation: Statutorily mandated by KRS 324.281(8), KRS 324.281(7) mandates continuing education.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) authorizes the Real Estate Commission authority to promulgate administrative regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provision of this chapter (KRS Chapter 324).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Regulation specifically details continuing education approval process and procedure agency must following continuing education requirements are not met.
(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
1. Pursuant to statute reflects increase in legal continuing education hours from 2 to 3;  
2. Details procedure for Kentucky Real Estate Commission Education Director to submit education course information to the Kentucky Real Estate Commission;  
3. Details the procedure the Kentucky Real Estate Commission shall follow when a licensee fails to obtain required continuing education hours;  
4. Details procedure by which Kentucky Real Estate Commission will accept out-of-state continuing education courses; and  
5. Updates material incorporated by reference.  
(b) The necessity of the amendment to this administrative regulation:  
1. Statutory change mandates this regulatory amendment; and  
2. KRS Chapter 13A requires this procedure be detailed in regulation.  
(c) How the amendment conforms to the content of the authorizing statutes:  
1. Conforms to the change enacted by the general assembly in 2000;  
2. Specifies procedure pursuant to KRS Chapter 13A; and  
3. Specifies material as specified by KRS Chapter 13A as the text of these documents is sought to be amended.  
(d) How the amendment will assist in the effective administration of the statutes:  
1. Matches statutory change in language and is therefore mandated; and  
2. Provides notice to all licensees the exact procedure which the Kentucky Real Estate Commission shall follow for review of continuing education courses and the failure of a licensee to obtain required continuing education.  
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees subject to continuing education are affected by these changes also real estate schools are affected by these amendments.  
(f) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The licensee population will have procedure specifically detailed if one fails to obtain continuing education. Real Estate Schools are provided notice of the approval procedure for courses and licensees who attend continuing education out of state are provided notice as to the procedure for approval of those courses.  
(g) Provide an estimate of how much it will cost to implement this administrative regulation:  
(a) Initially: No cost is anticipated to implement these amendments.  
(b) On a continuing basis: No cost is anticipated.  
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement this amendments.  
(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not establish or increase any fees directly of indirectly.  
(8) TIERING: Is tiering applied? The increased continuing education requirement does not affect the licensees exempted from continuing education pursuant to KRS 324.281. Other than this exemption all regulated licensees are required to obtain this education. There is no reasonable criteria to exempt any class. The requirements relative to delinquent continuing education licensees applies to all licensees who fail to attend statutorily mandated continuing education. There is no reasonable method to distinguish in this regard. However, it is noted that a licensee must fail to meet the legal requirements before the regulation becomes applicable. The out-of-state education falls under this provision. In-state continuing education submits to a separate review and therefore does not contribute significantly to the problem addressed by the provision and is excluded.

RELATED TO: KRS 324.160(4) [(1)] (i), (h)  
STATUTORY AUTHORITY: KRS 324.281(5), 324.282  
NECESSITY, FUNCTION AND CONFORMITY: KRS 324.282  
authorizes the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 324. This administrative regulation establishes standards for property management. [To inform and set certain standards for the licensees and to protect the public.]  

(2) A property management agreement shall contain:  
(a) The business name and address of the licensed agent's company;  
(b) The name and address of the owner;  
(c) The address of the real estate being managed and the number of units;  
(d) The date when the agreement begins and ends, and a provision stating whether the owner agrees or not to automatic annual renewal;  
(e) A provision stating the method for early termination;  
(f) The amount of, or the method of computing the amount of compensation to the licensee [licensed agent];  
(g) The amount of or the method of determining the minimum security deposit to be collected from tenants for each unit managed;  
(h) The name and address of the bank where the licensee's [agent's] escrow account is kept where the security deposit will be held together with the account number. This information must also be contained in the lease;  
(i) A provision which is in accord with KRS 383.580 setting forth the procedures governing returning or retaining the security deposit. This provision shall also be contained in the lease;  
(j) A provision setting forth the conditions under which the licensee [agent] is authorized to pay expenses related to the real estate being managed;  
(k) A statement setting forth the date when the licensee [agent] shall send the owner an accounting of the transactions related to the real estate being managed;  
(l) A copy of the form of the lease document which the licensee shall have the tenant sign must be attached to the agreement;  
(m) A provision whereby the owner certifies that he has received a duplicate copy of the agreement and the attached lease form; and  
(n) The signature and date of signature of the owner and the licensee [agent].

Section 2. (1) An owner ledger, in electronic or written form, shall be maintained for each owner of real estate being managed.  
(2) A tenant ledger, in electronic or written form, shall be maintained for each tenant renting real estate being managed.  
(3)(a) A receipt shall be given for money received.  
(b) Money received shall be deposited into an escrow or management account of the licensee [agent] without unreasonable [undue] delay. License [Agents] who have an ownership in the real estate being managed shall comply with the requirements of KRS 383.580.  
(c) The amount of money received shall be entered into the owner and tenant ledgers, by unit.  
(4) Expenses paid by an agent shall be documented by invoice or receipt, by unit. Documentation shall be retained with a licensee's [an agent's] records.  
(5) Adjustments to a security deposit shall be made in accordance with KRS 383.580. Adjustments shall also be entered on the owner and tenant ledgers, by unit.  
(6) A licensee [An agent] shall send a monthly accounting to an owner of transactions:  
(a) Related to the real estate being managed, by unit; and  
(b) Entered on the owner and tenant ledgers, by unit.
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(7) Within sixty (60) days of the termination of a management agreement, a licensee (an agent) shall send the owner a final accounting. The final accounting shall contain transactions that occurred after the last monthly accounting.

(8) A licensee (an agent) who owns the real estate being managed shall:
(a) Comply with the accounting requirements relating to receipt, deposit and adjustment of tenant security deposits; and
(b) Be exempt from the other accounting requirements specified in this administrative regulation.

Section 3. A broker shall retain property management agreements, leases, monthly statements, owner and tenant ledgers, and bank statements relating to property management for five (5) [four (4)] years.

Section 4. A tenant security deposit shall be deposited and maintained in an escrow account in compliance with KRS 324.111. Licensees (Agents) who have an ownership in the real estate being managed shall comply with the requirements of KRS 383.580.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:
(a) What this administrative regulation does: Details property management requirements for licensees engaging in property management.
(b) The necessity of this administrative regulation: Property management is an activity which requires licensure. This regulation provides notice to licensees as to minimum standards of behavior which provide those engaging in the regulation of security services adequate safeguards.
(c) How this administrative regulation compares to the content of the authorizing statutes: KRS 324.281(5) authorizes the Real Estate Commission authority to promulgate administrative regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provisions of this chapter (KRS Chapter 324).

(d) How this administrative regulation currently assists or will assist in the effective implementation of the statute: Provides specificity in an area which is not much addressed in KRS Chapter 324.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Changes term "licensed agent" to "licensee" throughout regulation; changes reference from "undue delay" to "unreasonable delay".
(b) The necessity of the amendment to this administrative regulation: Use of term "agent" is inappropriate since licensees do not always act in an "agency" capacity; "undue" delay is not defined in 201 KAR 11 while "unreasonable" delay is specifically defined.

(c) How the amendment conforms to the content of the authorizing statutes: Amendment reflects the actual status of "licensee" in a transaction and "unreasonable" delay is specifically defined thereby providing compliance with statutory mandate that terms be understandable by one reading the regulation.

(d) How the amendment will assist in the effective administration of the statutes: Current regulation is inaccurate in its use of "licensed agent" and "unreasonable delay." The amendments more accurately reflect the true status of the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees who engage in property management are affected by this change. As the Real Estate Commission does not issue "property management" licenses and cannot track all property management activity in Kentucky, it is impossible to determine the exact number of affected individuals.

(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: No substantive impact as the amendments involve a change in terminology and provide a specific definition by which deposits must be made.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost to implement the amendments.
(b) On a continuing basis: No cost is anticipated.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary to implement the amendments.

(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 necessary to implement the amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the term "licensee" is substituted for "agent" and this applies equally to all licensees who manage property. This terminology change is not applicable for tiering. The regulation is limited to licensees who manage property.

KENTUCKY REAL ESTATE COMMISSION
(Amendment)

201 KAR 11:250. Listing and purchase contracts - provisions required.

RELATES TO: KRS 324.150(4)(w) [324.281(5); 324.282] STATUTORY AUTHORITY: KRS 324.281(5); 324.282 NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes standards for listing and purchase contracts. [For form and set certain standards for the licensees and to protect the public.]

Section 1. Listing contracts shall include the:
(1) Listing price of the property, unless the sale is to be by auction;
(2) Date and time of the signing of the listing contract for all parties who sign;
(3) Date and time of expiration of the listing contract;
(4) Fee or compensation [commission] agreed upon;
(5) Street, address or location of the real estate listed for sale;
(6) Signatures of all owners; and
(7) Special directions of the owner concerning limitations on showings and subagency restrictions; and

(8) Date and time for initiation of all changes on the document.

Section 2. An offer to purchase and a counteroffer prepared by or at the direction of a licensed agent shall include the:
(1) Purchase price, the amount of contract deposit given and who
is to hold the deposit;
(2) Date and time of signing of the offer or counteroffer for all parties who sign;
(3) Date and time when the offer or counteroffer expires;
(4) Street, address or a general description of the real estate sufficient to identify the parcel;
(5) Names of the offering party and the agent who prepared the offer or counteroffer; and
(6) Provision setting forth the date by which the closing shall occur and when possession shall be given to the buyer.

Section 3. (1) If a party or his or her representative presents an offer to purchase real estate for which an executory contract to sell the property is already in existence, the offer shall indicate in writing that the offer is contingent upon the nonperformance of the existing executory contract. No specific language is mandated however, “this offer is a back-up offer” meets the requirements of this section. A licensed agent shall insert the following provision in a contract made after an executory contract of sale of real estate that has not been leased according to its terms: “This contract is contingent upon the nonperformance of a contract of sale, and any signed extension, in which insert names of purchasers have agreed to purchase the real estate that is the subject of this contract.”
(2) The provision required in subsection (1) of this section shall be:
(a) Inserted by the licensee [agent] who prepares the offer to purchase, if he is aware of the existing contract; and
(b) Made by the listing licensee [agent] as a counteroffer.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 425-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Jeffrey Blair
(1) Provide a brief summary of:
(a) What this administrative regulation does: Provides minimum information that must be included in listing and purchase contracts presented by licensees.
(b) The necessity of this administrative regulation: This information makes clear what real property is offered and under what conditions the real property is available. Information addresses problematic issues for licensees and consumers through experience of Real Estate Commission.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) authorizes the Real Estate Commission authority to promulgate administrative regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provision of this chapter (KRS Chapter 324).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Much of the information required in this regulation is necessary to create a valid contract.
(2) 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: As indicated in Section 2 above, numerous instances have occurred where confusion exists about the timing of a listing contract’s effective date and these amendments will address those circumstances; the term “compensation” addresses all licensee generation payments; the new “back-up offer” language should be more understandable for licensees.
(3) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: It is estimated the amendments will have an initial cost to some licensees. Many real estate companies purchase “form” listing contracts in bulk. This change will require companies to print and purchase new “form” listing contracts and may result in some “old” form contracts not being utilized and therefore a cost incurred. The Real Estate Commission has notified industry representatives of this situation. As this amendment would not become effective until 2001, it is believed that companies can estimate the number of “forms” needed and purchase accordingly. It is estimated that most companies will be able to limit the cost incurred by appropriate planning and
purchasing efforts.

(b) On a continuing basis: No further cost is anticipated.

(5) What is the source of the funding to be used for the implementa-
tion and enforcement of this administrative regulation: No fund-
ing provided.

(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 needed or necessary.

(8) State whether or not this administrative regulation establishes
any fees or directly or indirectly increases any fees: This amendment
does not establish or increase any fees directly or indirectly but may
result in some cost as indicated in (5) above.

(9) TIERING: Is tiering applied? Tiering is not utilized as there is
no disproportionate impact on any class and all contribute significantly
to the problem addressed by the amendments. There is no reasonable
criteria to distinguish between any class.

KENTUCKY REAL ESTATE COMMISSION

(Administrative)

201 KAR 13:350. Seller’s disclosure of conditions form.

RELATES TO: KRS 324.360
STATUTORY AUTHORITY: KRS 324.281(5), 324.282, 324.360
REQUISITE, FUNCTION, AND CONFORMITY: KRS 324.360
requires the Kentucky Real Estate Commission to promulgate
an administrative regulation authorizing a "seller's disclosure of conditions
form" and sets forth matters which the form shall contain and allows
the inclusion of additional matters. This administrative regulation estab-
ishes the required "Seller Disclosure of Property Condition" form
required by KRS 324.360.

Section 1. The "Seller Disclosure of Property Condition" form
established in Section 2 of this administrative regulation shall be com-
pleted and signed as required by KRS 324.360 by a seller of residen-
tial real estate.

Section 2. The "Seller Disclosure of Property Condition" form shall
be in the following format:

"SELLER DISCLOSURE OF PROPERTY CONDITION"

The information in this form is only for the period the undersigned
owned the property beginning (date of purchase) to (date of this form).
This form applies to sales and purchases of residential real estate.
This form is not required for:
1. Residential purchases of new homes if a [written] warranty is
offered;
2. Sales of real estate at auction; or
3. A court supervised foreclosure.

PROPERTY ADDRESS:
PURPOSE OF STATEMENT: Completion of this form shall satisfy the
requirements of KRS 324.360 which mandates the seller's disclosure of
information about the property he is about to sell. This disclosure is
based solely on the seller's observation and knowledge of the prop-
erty's condition and the improvements thereon. This statement shall
not be a warranty by the seller or seller's agent and shall not be in-
tended as a substitute for an inspection or warranty the purchaser may
wish to obtain.

INSTRUCTIONS TO THE SELLER: (1) Complete all numbered items.
(2) Report all known conditions affecting the property. (3) Attach addi-
tional pages, if necessary, with your signature and date and time of
signing (if necessary). (4) Complete this form yourself unless the appli-
cable provision regarding licensee completion is utilized. (5) If some
items do not apply to your property, write "not applicable". (6) If you do
not know the answer to a question, write "unknown".

SELLER'S DISCLOSURE: As seller, I/we disclose the following informa-
tion regarding the property. This information is true and accurate to
the best of my/our knowledge as of the date signed. Seller authorizes
the agent to provide a copy of this statement to a person or entity in
connection with actual or anticipated sale of the property or as other-
wise provided by law. The following are not the representations of the
agent.

Please answer all questions. If the answer is yes, please explain. If
additional space is needed, use the reverse side or make attach-
ments.

<table>
<thead>
<tr>
<th>1. HOUSE SYSTEMS</th>
<th>Yes</th>
<th>No</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any past or current problems affecting:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Plumbing</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Electrical system</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Appliances</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) Floors and wall</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) Doors and windows</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(f) Ceiling and attic fans</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(g) Security system</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(h) Sump pump</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) Chimneys, fireplaces, inserts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(j) Pool, hot tubs, sauna</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(k) Sprinkler system</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(l) Heating: age</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(m) Cooling/air conditioning age</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Explain:

<table>
<thead>
<tr>
<th>2. FOUNDATION/STRUCTURE/BASEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Any defects or problems, current or past, to the foundation or slab?</td>
</tr>
<tr>
<td>(b) Any defects or problems, current or past, to the structure or exterior veneer?</td>
</tr>
</tbody>
</table>

Explain:

<table>
<thead>
<tr>
<th>3. ROOF</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Age of the roof?</td>
</tr>
<tr>
<td>(b1) Has the roof leaked at any time since you have owned or lived in the property?</td>
</tr>
<tr>
<td>2. When was the last time the roof leaked?</td>
</tr>
<tr>
<td>(c1) Have you ever had any repairs done to the roof?</td>
</tr>
<tr>
<td>2. If you have ever had the roof repaired, when was the repair performed?</td>
</tr>
<tr>
<td>(d1) Have you ever had the roof replaced?</td>
</tr>
<tr>
<td>2. If you have had the roof replaced, when was the replacement performed?</td>
</tr>
<tr>
<td>(e1) If the roof presently leaks, how often does it leak? (e.g., every time it rains, only after an extremely heavy rain, etc.)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. LAND/DRAINAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Any soil stability problems?</td>
</tr>
<tr>
<td>(b) Has the property ever had a drainage, flooding, or grading problem?</td>
</tr>
</tbody>
</table>
(a) Is the property in a flood plain zone?
(b) Are you aware of any use of ureaformaldehyde, asbestos materials, or lead-based paint in or on this home?
(c) 1. Are you aware of any testing for radon gas?
(d) If tested:
(e) Are you aware of any present or past wood infestation (i.e., termites, bores, carpenter ants, fungi, etc.)?
(f) Are you aware of any damage due to wood infestation?
(g) 1. Have the house or other improvements ever been treated for wood infestation?

5. BOUNDARIES
(a) Have you ever had a staked or pinned survey of the property?
(b) Do you know the boundaries?
(c) Are the boundaries marked in any way?
(d) Are there any encroachments or unrecorded easements relating to the property of which you are aware?

6. WATER
(a)1. Source of water supply
(b) Are you aware of below normal water supply or water pressure?
(c) Is there a water purification system or softener remaining with the house?
(d) Has your water ever been tested? If yes, give results

7. SEWER SYSTEM
(a) Property is serviced by:
   - public sewer;
   - private sewer;
   - septic tank;
   - storm sewer;
   - leach field;
   - aeration tank;
   - filtration bed;
   - unknown
(b) If not a public or private sewer:
   - Date of last inspection:
   - Date last cleaned:
(c) Are you aware of any problems with the sewer system?

8. CONSTRUCTION/REMODELING
(a) Have there been any additions, structural modifications, or other alterations made?
(b) Were all necessary permits and government approvals obtained?

9. HOMEOWNER’S ASSOCIATION
(a) 1. Is the property subject to rules or regulations of a homeowner’s association?
(b) Are you aware of any condition which may result in an increase in taxes or assessments?
(c) Are any features of the property shared in common with adjoining landowners, such as walls, fences, driveways, etc.?

10. MISCELLANEOUS
(a) Was this house built before 1978?

The seller has owned this property since (date) and makes these representations only since that date. Seller agrees to immediately notify buyer of any changes which may become known to seller prior to closing.

Seller:
Date:
Seller:
Date:
THE LICENSEE NAMED HERE (NAME) HAS BEEN REQUESTED BY THE OWNER TO COMPLETE THIS FORM AND HAS DONE SO. I HEREBY AGREE TO HOLD HARMLESS THE NAMED LICENSEE FOR ANY REPRESENTATION THAT APPEARS ON THIS FORM. THE SELLER REFUSES TO COMPLETE THIS FORM AND ACKNOWLEDGES THAT THE AGENT SHALL SO INFORM THE BUYER.

Seller:
Date:
THE SELLER HAS REFUSED TO COMPLETE THE FORM AND HAS REFUSED TO ACKNOWLEDGE HIS FAILURE TO COMPLETE THE FORM.

Broker/Agent:
Date:
THE BUYER ACKNOWLEDGES RECEIPT OF THIS FORM.

Buyer:
Date:
Buyer:
Date:
THE SELLER MAY DISCLOSE ADDITIONAL INFORMATION NOT REQUESTED OF THIS FORM AND MAY RESPOND TO ADDITIONAL INQUIRIES OF THE BUYER.*

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Stion Stion Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 425-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair
(1) Provide a brief summary of:
(a) What this administrative regulation does: Provides a Sellers Disclosure of Property Conditions Form.
(b) The necessity of this administrative regulation: KRS 324.360 mandates this regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.360 mandates this regulation. This regulation conforms to the statutory mandate.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Regulation meets mandate of legislature.
(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: HB 677 (enacted) mandated the Real Estate Commission to amend the form to allow licensee completion or the form if a seller requests and exclude the form for new homes when warranty is offered. The old law required a "written" warranty; the "time" of signing for seller is added. Industry members requested additional question be added to the form regarding fires and other disasters (tornadoes, hail, etc.).
(b) The necessity of the amendment to this administrative regulation: HB 677 (enacted) mandated the "licensee completion" section and the deletion of "written" warranty requirement.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.360 authorizes the Real Estate Commission to create the form established by this regulation. Changes to KRS 324.360 by the enactment of HB 677 mandate 2 of the amendments.
(d) How the amendment will assist in the effective administration of the statutes: By virtue of KRS 324.360, the Real Estate Commission must create this form. These amendments are in accordance with that authority.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees who market residential single-family homes must utilize the form.
(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: KRS 324.360 was amended to allow licensees to complete the form if the seller so requests and signs a disclaimer about the licensee's representations. Licensees may now complete the form. The additional property information included in the form should provide more information to consumers about property they are considering purchasing.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: It is estimated no cost will exist to implement the amendment.
(b) On a continuing basis: No cost is estimated.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed to implement the amendment.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding necessary to implement or enforce this amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not directly or indirectly increase or establish any fees.
(9) TIERING: Is tiering applied? Tiering is applied as this regulation applies only to licenses who market single family residential homes. By virtue of statute, many licensees who engage in sales of commercial property or who perform property management do not contribute significantly to the problem this regulation is designed to address and are therefore excluded. Other tiering occurs by virtue of the exclusions for new homes for which a written warranty is offered, auction sales, and court supervised foreclosures. These exclusions further narrow the scope of 201 KAR 11:30.

KENTUCKY REAL ESTATE COMMISSION
(Amendment)

201 KAR 11:400. Agency disclosure requirements.

RELATES TO: KRS 324.130(4)(e); (n) (1)(e)
STATUTORY AUTHORITY: KRS 324.281(5), (324.166(1)(e); (f)
324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.160(1)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation establishes a specific format for disclosing the relationship between a broker or sales associate, seller, and buyer in a residential transaction to: (1) ensure that each party knows what relationship exists between the parties; and (2) have documented evidence that the disclosure occurred.

Section 1. Definitions. (1) "Commercial transaction" means a transaction other than the sale of a single-family residential property, multifamily property containing four (4) units or less, single-family residential lot, or agricultural property.
(2) "Delivery" means delivery of an item to a prospective party (or his broker or sales associate) by:
(a) Mail;
(b) FAX transmission;
(c) Electronic mail;
(d) Messenger; or
(e) [Blank].
(3) "First contact" means the period:
(a) Before a contract containing a duty of representation and compensation is entered into by:
1. Prospective party who does not have a broker or sales associate; and
2. A broker or sales associate who has offered to represent him;
(b) Before the beginning of discussions relating to a real estate transaction between:
1. Prospective party who does not have a broker or sales associate; and
2. A broker or sales associate who has proposed to discuss the real estate transaction with him.
(4) "First substantial contact" means the period between the first contact and the period immediately preceding the presentation of a written offer to purchase.
Section 2. The provisions of this administrative regulation shall not apply to:
(1) Sale of real estate at auction;
(2) Property management of real estate; or
(3) Commercial transaction.

Section 3. Prospective Party Information. (1) A licensee shall deliver a completed “Section A” of the Agency Information and Disclosure Form to a prospective party prior to:
(a) Receiving confidential information from a prospective party;
(b) Entering a representation agreement or submitting an offer to, or on behalf of, a prospective party;
(c) No later than the conclusion of the second contact between the licensee and a prospective party.
(2) The Agency Information and Disclosure Form shall provide:
(a) Relationships available between the licensee and prospective party in Kentucky;
(b) The specific relationship proposed between the licensee and prospective party;
(c) Name of licensee completing the form, name of principal broker of the licensee, and name of licensee’s real estate company;
(d) Name of prospective party;
(e) Signature and date of signing of licensee;
(f) Signature and date of signing of prospective party;
(3) The licensee shall complete “Section B” of the “Agency Information and Disclosure Form” if dual agency is being offered to the party. If dual agency is being offered, the completed “Section B” shall be delivered to the party prior to the creation of the dual agency. “Section B” shall provide:
(a) The name of the other party represented in the transaction by the licensee;
(b) The address of the property that is the subject of the transaction;
(c) Indication whether licensee is acting as a party, has any financial interest, or may have any financial interest, in any transaction in which the consumer is involved;
(d) Signature and date of signing of licensee; and
(e) Signature and date of signing of party.
(4) “Agency Information and Disclosure Form” required by subsection (1) of this section shall be “The Agency Information and Disclosure Form” approved by the Kentucky Real Estate Commission.
(5) A broker or sales associate shall deliver to a prospective party an Agency Information Bulletin on the first contact. The Agency Information Bulletin shall:
(a) Be prepared by the broker or sales associate; and
(b) Generally summarize the possible relationships that may exist between the broker or sales associate, and the buyer and seller.
(2) A broker or sales associate shall deliver to a prospective party an “Agency Disclosure Form” on the first substantial contact. The “Agency Disclosure Form” shall:
(a) Be signed by each:
1. Prospective party to the transaction; and
2. Broker or sales associate involved in the transaction; and
(b) Identify:
1. Each prospective party known to the broker or sales associate making the disclosure;
2. If a prospective party is represented by a broker or sales associate, the name of the broker or sales associate, his real estate company, and whom he represents; and
3. The real estate that is the subject of the negotiation;
(c) Describe the personal, family, or business relationships between:
1. The broker or sales associate making the disclosure; and
2. Each prospective party known to the broker or sales associate when the disclosure is made;
(d) State whether the broker or sales associate making the disclosure is acting as a principal as a prospective:
1. Seller;
2. Buyer;
3. Lender; or
4. Investor;
(e) Contain a statement that:
1. An agent owes a fiduciary duty to his client, including:
   a. A duty of loyalty;
   b. Giving the client all the information the agent knows about the property;
   c. Honesty and fair dealing; and
   d. Negotiating in the best interests of his client;
2. An agent owes a duty of honesty and fair dealing to his customer; and
3. The payment of a fee to an agent shall not create a fiduciary duty to the person paying the fee; and
(f) Indicate whether the listing or selling licensee is acting as a designated agent.
(3) The “Agency Disclosure Form” and the “Agency Information For Consumers’ Bulletin” required by subsection (1) of this section shall be:
(a) The “Agency Disclosure Form Approved By Kentucky Real Estate Commission” and the “Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission”; or
(b) An Agency Disclosure Form, and Agent Information For Consumers Bulletin, that have been developed by the broker or sales associate and approved by the commission.
(4) (a) An “Agency Information and Disclosure Form” that has been developed by the broker or sales associate shall be submitted to the commission for approval.
(b) The general counsel of the commission shall:
1. Review the form;
2. Make a recommendation to the commission that the form be approved or disapproved; and
3. Inform the broker or sales associate of the commission’s decision.

Section 4. [Commission Review of Licensee Documents. The commission shall:
(1) Review a licensee listing agreement, buyer broker agreement, or purchase agreement;
(2) Approve an agreement that it determines contains the information required by this administrative regulation; and
(3) Inform the broker or sales associate of the commission’s action.

Section 5.) Incorporation By Reference. (1) The following material is incorporated by reference: [(a) "Agency Information and Disclosure Form" (August, 2000), Approved By Kentucky Real Estate Commission (November 15, 1996)]; and
(b) "Agency Information For Consumers’ Bulletin Approved by
KENTUCKY REAL ESTATE COMMISSION (1999):

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10100 Linn Station Road, Suite 201, Louisville Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides for disclosure of who licensee represents in a real estate transaction.

(b) The necessity of this administrative regulation: Agency disclosure regulations began appearing in the United States in the mid 1990's. Studies at the time indicated consumers greatly misunderstood who real estate agents represented in real estate transactions. Since 1996, Kentucky's agency disclosure regulation has provided consumers specific documentation as to who real estate licensees represent in a transaction. The regulation has effectively addressed issues regarding agency and representations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) authorizes the Real Estate Commission authority to promulgate administrative regulations. KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations to effectively carry out and enforce the provisions of this chapter (KRS Chapter 324).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation has effectively addressed issues of nondisclosure of representation since 1996. Changes are needed as indicated in the amendment summary below. However, the regulation concept still serves the initial need.

(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: Amendment allows delivery of the form by electronic mail; provides specific definitions of individuals subject to the regulation; provides specific completion requirements for the form; amends current forms of "Consumer Information Bulletin" and "Agency Disclosure Form" into one "Agency Information and Disclosure Form".

(b) The necessity of the amendment to this administrative regulation: This amendment is designed to improve the current regulation. Similar regulations were enacted in the mid 1990's (Kentucky-January 1996) throughout the country. After 4 1/2 years, several problems exist with the current regulation including: the reluctance of consumers to sign receipt of a consumer bulletin "on first contact" (current regulation). The amendment does not require the licensee to deliver any document to a consumer on first contact. Many licensees feel that consumers are currently "lost in paperwork" due to the 2 required forms under the current law. The amendment incorporates the 2 forms into 1. Another issue (that exists) with the current form is the "agency disclosure form" does not need to be delivered until any time prior to the offer being submitted. If a licensee is engaging in dual agency prior to this time and an informed dual agency consent has not been obtained, the licensee may have engaged in an undisclosed dual agency. Therefore, the amendment provides a "consent to dual agency" in response to industry requests and concerns.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes prohibit undisclosed dual agency and authorize the Real Estate Commission to promulgate regulations to carry out this objective.

(d) How the amendment will assist in the effective administration of the statutes: As indicated in (2)(b) above, the initial regulation was enacted in 1996. At that time, no regulatory agencies had significant experience with agency disclosure regulations and therefore, a model which addressed all the problems associated with agency and real estate brokerage. These amendments are offered after 4 years of implementation of the original regulation and are based on the experience of licensees and the Real Estate Commission. The issue "agency" issue is the most difficult regulatory issue for the Real Estate Commission and these amendments address the concerns of licensees and the Real Estate Commission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees who perform residential real estate brokerage are affected.

(4) Provide an assessment of how the above group or groups will be affected by either the implementation of this administrative regulation, if new, or by the changes if it is an amendment: The amendments are offered to address several concerns raised by licensees. It is anticipated the amendments will address these concerns.

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

(a) Initially: The only cost that may exist would be if companies printed forms in bulk and had excess forms if the regulation is amended. The Real Estate Commission has informed industry groups of the proposed amendment to put their members on notice to purchase forms that will cover the time until an amendment occurs.

(b) On a continuing basis: There may be cost for continued printing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed to implement or enforce the 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 necessary to amend this regulation.

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

(9) TIERING: Is tiering applied? Tiering is applied as this regulation applies only to residential sales of real estate. Commercial transactions are excluded as they do not contribute significantly to the problem the regulation is designed to address. Property management activity and auction sales are also excluded as this activity does not contribute significantly to the problem the regulation is designed to address. Tiering is further utilized by the amendment which limits the form's requirements to one who has not entered into a brokerage agreement with a licensee relative to a contemplated transaction. This avoids regulating transactions which do not contribute significantly to the problem which the regulation was designed to address.

KENTUCKY BOARD OF OPHTHALMIC DISPENSERS

(Amendment)

201 KAR 13:010. Board; powers, duties, meetings.

RELATES TO: KRS 326.020

STATUTORY AUTHORITY: KRS 326.020(3)

NECESSITY, FUNCTION, AND CONFORMITY: To specify the powers, duties, and meeting dates of the board and its officers.

Section 1. "Board" means the Kentucky Board of Ophthalmic
Section 2. Officers; Duties; Meetings. (1) The officers of the board shall be a chairman and a secretary-treasurer.

(2) Three (3) members of the board shall constitute a quorum for the transaction of business.

(3) Officers of the Board shall be elected by ballot, and shall hold their respective offices at the pleasure of the board.

(4) The board shall meet at least three (3) times a year, namely: on the third Wednesday in March, the third Wednesday in July and the third Wednesday in November of each year. Other meetings of the board shall be called by the chairman on his own motion or by written request of three (3) board members. The secretary-treasurer shall give timely notice of the time and place of such meetings to each member.

(5) The officers of the board shall discharge the duties that usually pertain to their respective offices.

(6) Meetings of the board shall be conducted as nearly as possible under Robert's Rules of Order.

(7) These rules and administrative regulations may be amended at any regular or special meeting of the board, provided such proposed amendments have been submitted to the members of the board at least ten (10) days prior to such meeting. Such ten (10) day notice may be waived provided there is written unanimous consent.

(8) The board shall hold examinations for candidates for ophthalmic dispensers' licenses at its regular March and November meetings, and at such other time as the board may determine.

(9) The examination of applicants for a license shall be upon the following subjects:

(a) Ophthalmic lenses;

(b) Dispensing procedure;

(c) Visual aids; and

(d) Mechanical optics.

(10) Examinations shall be conducted in such manner that the result shall be entirely fair and impartial, the applicants being known by numbers only, so that no member of the board shall be able to identify the written examination of any applicant until it has been graded. All applicants examined at the same time shall have the same written questions asked them, and they shall be required to make an average grade of sixty (60) with a minimum grade of fifty (50) in any one (1) branch. Part of the examination may be oral or demonstrative.

(11) All written, oral or demonstrative examinations administered by this board shall be conducted in the presence of at least one (1) board member.

(12) An applicant who has been rejected may become an applicant at any future examination by submitting a new application on a prescribed form and the payment of the required fee of twenty-five ($25) dollars.

(13) An application for a license shall be filed with the board at least twenty (20) days before the examination.

(14) The secretary-treasurer shall keep a permanent record of the names and addresses of all persons holding a license.

(15) The Secretary of State, Commonwealth of Kentucky, shall have the names and addresses of the current chairman and the secretary-treasurer and the board's business address.

(16) All licenses shall be signed by both the chairman and the secretary-treasurer.

(17) All fees and monies collected shall be paid to the secretary-treasurer of the board and shall be deposited in the State Treasury and to the credit of an agency fund for the use of the board.

GRANVILLE SMITH, Chair
APPROVED BY AGENCY: September 13, 2000
FILED WITH LRC: November 14, 2000 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 28, 2000, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 21, 2000, five (5) workdays prior to the hearing, of their intent to attend. 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. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (606) 664-2966 ext. 224; Fax: (606) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nancy Black
(1) Provide a brief summary of
(a) What this administrative regulation does: This regulation specifies the mechanics of the board, its offices, and the dates for board meetings.

(b) The necessity of this administrative regulation: This regulation is necessary to ensure orderly transaction of business by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation allows the board to follow procedures that will enable it to operate within the authorizing statutes most effectively.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administration identifies administrative details that the board will follow in its operation.

(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 deletes references to the examination and application processes which will be repromulgated in another regulation.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to place details for examinations and applications in the appropriate regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation allows the board to follow procedures that will enable it to operate within the authorizing statutes most effectively.

(d) How the amendment will assist in the effective administration of the statutes: This administration identifies administrative details that the board will follow in its operation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently licenses approximately 650 ophthalmic dispensers and 240 ophthalmic dispensers apprentices.

(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: These groups will not be impacted by the changes as is only identifies guidelines for the board to follow.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation specifies internal procedures for the board.
KENTUCKY BOARD OF OPHTHALMIC DISPENSERS
(Amendment)

201 KAR 13:030. Contact lens fitting.
RELATES TO: KRS 326.060
STATUTORY AUTHORITY: KRS 326.020(3)
NECESSITY, FUNCTION, AND CONFORMITY: Procedures and policies regarding fitting of contact lenses.

Section 1. (1) The fitting of contact lenses is a function of ophthalmic dispensing as outlined in KRS 326.060, and an ophthalmic dispenser's license shall be required of any person who fits contact lenses except as specified in KRS 326.070(4).

(2) Contact lenses shall be furnished only upon prescription from a physician, osteopath or optometrist and under no circumstances shall the dispenser neutralize the customer's lenses to arrive at the prescription unless authorized to do so by the physician, osteopath or optometrist.

(3) Trial lenses or sample contact lenses shall not be inserted into the eye or eyes of a person for the purpose of demonstrating, measuring or for trial or for any other purpose incident to the fitting of contact lenses unless authorized to do so by a physician, osteopath or optometrist.

(4) In all cases of contact lens fitting, the ophthalmic dispenser shall not furnish contact lenses unless the prescription from a physician, osteopath or optometrist under which such lenses are to be furnished instructs the patient to return to such physician, osteopath or optometrist to complete the fitting process.

(5) It shall be the exclusive prerogative of the prescribing physician, osteopath, or optometrist, as set out in KRS 326.010, to determine whether contact lenses are more appropriate for the patient than [superior to] other forms of visual aid glasses.

(6) Since contact lens fitting is only one part of the ophthalmic dispensing procedure, the board will not consider an application for an apprentice license under 201 KAR 13:050 for any person working exclusively in contact lenses. All persons desiring to engage in contact lens fitting shall qualify as an ophthalmic dispenser under KRS 326.030 and be licensed by this board as such.

GRANVILLE SMITH, Chair
APPROVED BY AGENCY: September 13, 2000
FILED WITH LRC: November 14, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 28, 2000, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 21, 2000, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nancy Black

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation specifies policies and procedures regarding the fitting of contact lenses.

(b) The necessity of this administrative regulation: This regulation is necessary to inform licensees regarding proper practice relative to the fitting of contact lenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to the requirements of the statutes requiring the supervision of a physician, osteopath, or optometrist.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administration identifies the requirements necessary for the fitting of contact lenses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment clarifies terminology contained in the regulation.

(b) The necessity of the amendment to this administrative regulation: It clarifies terminology in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation conforms to the requirements of the statutes requiring the supervision of a physician, osteopath, or optometrist.

(d) How the amendment will assist in the effective administration of the statutes: This administration identifies the requirements necessary for the fitting of contact lenses.

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

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the all licensees must follow the requirements of the regulation.

KENTUCKY BOARD OF OPHTHALMIC DISPENSERS
(Amendment)

201 KAR 13:040. Licensing; application, examination; temporary permit; inactive status.
RELATES TO: KRS 326.023, 326.040
STATUTORY AUTHORITY: KRS 326.020(3), 326.040
NECESSITY, FUNCTION, AND CONFORMITY: To provide for the licensure of ophthalmic dispensers, apprentice ophthalmic dispensers, and temporary permits; specification of requirements for licensure and applications for licenses.

Section 1. Application for License. (1) Any person wishing to obtain the right to practice the vocation of ophthalmic dispenser, under KRS Chapter 326, shall make application to the Kentucky Board of Ophthalmic Dispensers on [upon] Form O.D. No. 1-00, [3-1, adopted by the board May 17, 1966] herein filed by reference; and shall obtain a license from the board permitting him to do so.

(2) The board shall admit to the practical examination any candidate who pays the required nonrefundable fee of fifty ($50) twenty-five ($25) dollars and who submits satisfactory evidence to the board, under oath, that he qualifies under the administrative regulations adopted by the board.

(3) The applicant shall:
(a) Be eighteen (18) years of age;
(b) Be of good moral character;
(c) Have passed all examinations required by the board prior to admission to the practical examination including the American Board of Opticians (ABO) and the National Contact Lens Examiners (NCLE); and
(d) Have completed at least two (2) years of satisfactory training and experience in ophthalmic dispensing under the supervision of a licensed ophthalmic dispenser, licensed physician, optometrist, or be a graduate of an accepted school of ophthalmic dispensing. The training and experience shall be as a licensed apprentice as hereinafter mentioned unless it is clearly shown to the satisfaction of the board, in its sole discretion, that the training and experience of the applicant is otherwise satisfactory, provided, however, that any time spent in a recognized school for ophthalmic dispensing or in an optical laboratory as an ophthalmic technician may, at the discretion of the board, be considered as a part of the two (2) years of satisfactory training and experience; and
(e) Have a high school or GED diploma.

(4) Applicants for the practical examination may be examined by the board upon matters pertaining to:
(a) Mathematics and physics;
(b) Ophthalmic materials and laboratory techniques;
(c) Ophthalmic optics, including spectacle and contact lens;
(d) Ophthalmic dispensing; and
(e) Practical subjects.

(5) When any applicant passes the necessary examination and meets the qualifications as set forth, and upon payment of an original fee of fifty-five dollars (55), the board shall issue a license to such person to engage in the vocation of dispensing optician within the state of Kentucky.

(6) Each license shall be subject to renewal on December 31 of each year, on Renewal Application [upon renewal application Form No. 2 for licensees, Renewal Application Form No. 2A for apprentices, herein filed by reference, and upon the payment of the required fee of fifty (50) dollars, wherein a renewal certificate will be issued. The renewal form and the required fee shall be received by January 2 of each year. There shall be a penalty fee of ten (10) dollars for any renewal form or fee received after January 2.

(7) An applicant for an apprentice as an apprentice shall be required to have taken either the ABO or the NCLE before the expiration of thirty (30) months from the date of receiving his apprentice license [apply to the board to take the examination to be licensed as an ophthalmic dispenser after the expiration of two (2) years of apprenticeship training].

(b) He shall be required to pass the examination within five (5) years of the date of his original license.

(c) If the applicant fails to pass the examination within that period of time, he may apply for, and the board may grant, at its discretion, permission to have his license reinstated under a different sponsor.

(d) When the board approves the reinstatement of the apprentice's license, the apprentice shall be subject to the same requirements that are contained in paragraphs (e) and (f) of this subsection.

(e) An applicant shall only be allowed to apply for this reinstatement one (1) time.

Section 2. Apprentice License Application. (1) For the encouragement and protection of those desiring to enter the vocation of ophthalmic dispensing as defined by KRS Chapter 326, the board has provided an apprentice training program.

(2) Applicants for apprentice licenses shall use Form O.D., 1A-00 and complete all questions, the same form provided for other applicants in Section 1 of this administrative regulation, and shall answer all questions except Sections (3) and (7a), b, c, and d.

(3) All other questions shall be filled out and the applicant shall show:
(a) Good faith of his intention to learn the vocation of ophthalmic dispensing;
(b) That he intends to apply himself to the subject; and
(c) That at the earliest date after the expiration of two (2) years of apprenticeship training, he intends to apply to the board for examination to be licensed as an ophthalmic dispenser.

Section 3. Temporary Permit Application. (1) The board may issue a temporary permit to qualified ophthalmic dispensers, who otherwise would qualify for a license but are in the state on a temporary basis or who have not yet had an opportunity to take an examination to procure a license and whose immediate employment depends upon being licensed by the board.

(2) Applicants for temporary permits shall use the same form provided for other applicants in Section 1 of this administrative regulation, and shall answer only Sections (7) and (9).

(3) The permit shall be valid only until the next regular examination date and in no case shall exceed six (6) months following date of issuance.

(4) The fee for a temporary permit shall be fifty-five dollars (55) for an ophthalmic dispenser, which amount shall accompany the application.

Section 4. Board Action. Notification. (1) The board shall act only upon those applications which are completely and properly filled out by the applicant.

(2) Each applicant shall enclose the prescribed license fee in the form of a check or money order made payable to the Commonwealth of Kentucky State Treasurer.

(3) Applicants shall be notified of the action of the board; and, if favorable, when and where the examination will be held.

Section 5. Inactive Status. (1) Upon application, the board may grant inactive status to a licensee. While on inactive status, the licensee shall not engage in the practice of ophthalmic dispensing.

(2) The fee for licensure on inactive status shall be ten (10) dollars per year.

(3) Continuing education requirements shall be waived for licensees on inactive status during the time they remain inactive. If at any time the inactive licensee applies to the board to return to active status, the licensee shall submit proof that he has completed six (6) hours of continuing education for ophthalmic dispenser licensees and four (4) hours of continuing education for apprentice ophthalmic dispenser licensees within the last twelve (12) month period immediately preceding the date on which the application is submitted. The licensee may request that he be allowed to return to active status immediately, with the provision that he shall receive the appropriate number of continuing education hours within six (6) months of the date on which he returns to active status. Additionally, the licensee shall be responsible for meeting the requirements set forth in 201 KAR 13:055 in order to qualify for renewal.

(4) The reactivation fee for changing from inactive status to active status shall be forty (40) dollars for an ophthalmic dispenser licensee and fifteen (15) dollars for an apprentice ophthalmic dispenser licensee.

Section 6. Examination Content And Procedures. (1) The board shall hold examinations for candidates for ophthalmic dispensers' licenses at its regular March, July, and November meetings, and at such other time as the board may determine.

(2) The examination of applicants for a license shall be upon the following subjects:
(a) Ophthalmic lenses, including spectacle and contact lenses;
(b) Dispensing procedure;
(c) Visual aids; and
(d) Mechanical optics.

(3) Examinations shall be conducted in such manner that the result shall be entirely fair and impartial, the applicants being known by numbers only, so that no member of the board shall be able to identify the written examination of any applicant until it has been graded. All applicants examined at the same time shall have the same written questions asked them, and they shall be required to make an average grade of seventy (70) with a minimum grade of fifty (50) in any one (1) branch. Part of the examination may be oral or demonstrative.

(4) All written, oral or demonstrative examinations administered by the board shall be conducted in the presence of at least one (1) board member.

(5) An applicant who has been rejected may become an applicant at any future examination by submitting a new application on a prescribed form and the payment of the required fee of fifty (50) dollars.

(6) An application for a license shall be filled with the board at least ten (10) days before the examination.
Section 7, Incorporation by Reference. (1) Form O.D. 1-00, Form O.D. 1A-00, Renewal Application Form No. 2, and Renewal Application Form No. 2A, Kentucky Board of Ophthalmic Dispensers, are incorporated by reference.

(2) These forms may be inspected, copied, or obtained at the Board of Ophthalmic Dispensers, 700 Louisville Road, Berry Hill Annex - Suite 8, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GRANVILLE SMITH, Chair
APPROVED BY AGENCY: September 13, 2000
FILED WITH LRC: November 14, 2000 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 28, 2000, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 21, 2000, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nancy Black
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation identifies the procedures and requirements for application and examination for licensure, apprenticeship licensure, and temporary permits.
(b) The necessity of this administrative regulation: This regulation is necessary to establish the requirements for licensure.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by specifying the qualifications and procedures for licensure as contemplated by the statute, including examination requirements. Additionally, the regulation identifies the exact fee specified in the statute.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will establish the requirements for licensure.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This regulation changes the existing regulation by incorporating the fee increase made by statute, specifying the required examinations, specifying the requirements for licensure set forth in the statute, and setting out the examination requirements previously contained in a different regulation.
(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish the requirements for licensure.
(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the authorizing statute by specifying the qualifications and procedures for licensure as contemplated by the statute, including examination requirements. Additionally, the regulation identifies the exact fee specified in the statute.
(d) How the amendment will assist in the effective administration of the statutes: This regulation establishes the requirements for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently licenses approximately 650 ophthalmic dispensers and 240 ophthalmic apprentice apprentices.
(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The applicants and licensees will have a clearer explanation of the requirements for examination process and for licensure.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional administrative costs will be incurred in implementing this regulation.
(b) On a continuing basis: No additional administrative costs will be incurred in implementing this regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by licensees and applicants.
(7) Provide an assessment of whether an increase in fees or funding is necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The board's source of funding is derived solely from application/licensure/renewal fees. The fee increase is necessary in order to support the administrative and regulatory functions of the board.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation increases the licensure fee from $25 to $50 as changed by the General Assembly in the 2000 Session. It also raises the temporary permit and the examination fees from $25 to $50.
(9) TIERING: Is tiering applied? Tiering was not applied as the regulation applies equally to all persons of the same class.

KENTUCKY BOARD OF OPHTHALMIC DISPENSERS
(Amendment)


RELATES TO: KRS 326.020, 326.035
STATUTORY AUTHORITY: KRS 326.020(3), 326.035
NECESSITY, FUNCTION, AND CONFORMITY: To define the terms "Ophthalmic Dispenser" and "Apprentice Ophthalmic Dispenser" and to specify the rights, powers and duties of the board with regard to Apprentice Ophthalmic Dispensers.

Section 1. Definition. The term "ophthalmic dispenser" whenever used herein includes licensee, physician, ophthalmic lens, frames and apparatuses thereto intended or worn only under the supervision of a licensed ophthalmic dispenser.

(2) An apprentice license shall be required of any person who is not a licensed ophthalmic dispenser, but who is in training as such and while in training works under the supervision of a licensed ophthalmic dispenser, and whose duties require that he perform the services as would be normally performed by a licensed ophthalmic dispenser. The board may revoke the apprentice license at any time if either the employer or the apprentice fail to carry out the provisions of this administrative regulation.


Section 2. Apprentices. (1) An apprentice ophthalmic dispenser is one who is in training for the vocation of ophthalmic dispenser and as such dispenses ophthalmic lenses, frames and apparatuses thereto intended or worn only under the supervision of a licensed ophthalmic dispenser.

(2) An apprentice license shall be required of any person who is not a licensed ophthalmic dispenser, but who is in training as such and while in training works under the supervision of a licensed ophthalmic dispenser, and whose duties require that he perform the services as would be normally performed by a licensed ophthalmic dispenser. The board may revoke the apprentice license at any time if either the employer or the apprentice fail to carry out the provisions of this administrative regulation.

(3) A licensed apprentice ophthalmic dispenser shall at all times work under the supervision of, and in the same establishment with, a licensed ophthalmic dispenser and the licensed ophthalmic dispenser shall be responsible for his acts.

(4) The board shall issue an apprentice license for a period ending December 31 of the current year, upon receipt and board approval of the required application and a fee of fifty (50) twenty-five (25) dollars. The apprentice license may be renewed at the end of the calendar year, for a period of one (1) year, upon application to the board accompanied by the required fee of twenty-five (25) dollars. In the event the apprentice's employment under the sponsoring ophthalmic dispenser is terminated for any reason, the board shall be notified immediately.

(5) In the interest of adequate training for the apprentice, the sponsor shall file an outline of the training schedule he proposes to
follow in training the apprentice; and also shall satisfy the board that the facilities of his establishment are sufficient to provide such training.

(5) [The applicant shall give evidence of good faith in his intention to learn the vocation of opthalmic dispensing; that he intends to apply himself to the subject and at the earliest date possible, after the expiration of two (2) years apprenticeship training, he intends to apply to the board for examination and to qualify as a licensed opthalmic dispenser. The board may at its discretion refuse to further renew the license if he fails to carry out the provisions of this administrative regulation:]

(7) [The board shall supply, upon request, a list of approved textbooks covering the subjects on which the examination is based. For those who are interested in attending a college or university where courses of opthalmic dispensing are offered, the board shall cooperate and offer every assistance possible.]

(9) [The board reserves the right to reject the application for an apprentice license or to rescind a license already issued if, upon inspection, it is found that any of the requirements for an apprentice license, as outlined in the administrative regulations, are being violated. All rules of conduct, paying of fees, suspensions or revocations and all other administrative regulations not specifically excluding apprentice licenses shall apply to the licensed apprentice opthalmic dispenser.

GRANVILLE SMITH, Chair
APPROVED BY AGENCY: September 13, 2000
FILED WITH LRC: November 14, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 28, 2000, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 21, 2000, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-4244; Fax: (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nancy Black
(1) Provide a brief summary of
(a) What this administrative regulation does: This regulation specifies the requirements for apprentices.
(b) The necessity of this administrative regulation: This regulation is necessary to specify the requirements for apprentices.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes allow the board to regulate the requirements for licensure and for apprentice opthalmic dispensers. Additionally, the fee increase set forth in this regulation is within the limits of the statute.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation assists the board administer the program for apprentices.
(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 regulation deletes several requirements which the board has determined to be unnecessary.
(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to specify the requirements for apprentices.
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes allow the board to regulate the requirements for licensure and for apprentice opthalmic dispensers. Additionally, the fee increase set forth in this amendment is within the limits of the statute.
(d) How the amendment will assist in the effective administration of the statutes: The regulation assists in administering the program for apprentices.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently licenses approximately 240 opthalmic dispenser apprentices.
(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: Apprentices and their supervisors will be able to identify the requirements for apprentices.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional administrative costs will be incurred in implementing this regulation.
(b) On a continuing basis: No additional administrative costs will be incurred in implementing this regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by applicants and licensees.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation increases the fee for apprentices from $25 to $50.
(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all apprentices.

KENTUCKY BOARD OF OPHTHALMIC DISPENSERS
(Amendment)

201 KAR 13:055. Continuing education requirements.

RELATES TO: KRS 325.020, 325.080
STATUTORY AUTHORITY: KRS 325.020(3)
NECESSITY, FUNCTION, AND CONFORMITY: To establish a continuing education program for opthalmic dispenser licensees and apprentice opthalmic dispenser licensees; to set forth the basic requirements, methods of accreditation, and manner of reporting.

Section 1. "Continuing education hour" means fifty (50) contact minutes of participating in continuing education experiences.

Section 2. Each opthalmic dispenser licensee shall be required to complete a minimum of six (6) continuing education hours in order to renew his license each year. Each apprentice opthalmic dispenser licensee shall be required to complete a minimum of four (4) continuing education hours in order to renew his license each year. Continuing education hours in excess of the number required at the time of renewal of license may not be applied to future requirements.

Section 3. A minimum of three (3) of the required six (6) continuing education hours for renewal of opthalmic dispenser licensure and a minimum of two (2) of the required four (4) continuing education hours for renewal of apprentice opthalmic dispenser licensure shall be obtained through programs sponsored by entities listed in Section 4(1) of this administrative regulation. The remaining continuing education hours may be obtained through any of the sources listed in Section 4 of this administrative regulation.

Section 4. Continuing education hours applicable to renewal of licensure shall be directly related to the professional growth and development of opthalmic dispensers. They may be earned by completing any of the following educational activities:
(1) Programs not requiring board review and approval. An educa-
tional program from any of the following providers shall be deemed to be relevant to ophthalmic dispensing and shall be approved without further review by the board if it is provided by (Relevant offerings provided by the following organizations or institutions that have been reviewed and approved by the board):
(a) The Society of Dispensing Opticians of Kentucky;
(b) The Opticians Association of America, or any of its affiliated state chapters;
(c) The Contact Lens Society of America, or any of its affiliated state chapters;
(d) The National Academy of Opticianary, or any of its affiliated state chapters;
(e) The American Optometric Association, or any of its affiliated state chapters;
(f) The American Academy of Ophthalmology, or any of its affiliated state chapters;
(g) The Southeastern Conference [Society of Dispensing Opticians]; or
(h) The National Association of Optometrists and Opticians.

(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 (Relevant offerings of the following types that have been reviewed and approved by the board):
(a) Accredited schools’ continuing education programs; or
(b) Any other provider’s continuing education programs.

(3) Related areas not specifically a part of the field of ophthalmic dispensing may be approved for up to (2) continuing education hours, if the board believes that said related areas may serve to enhance the licensee’s ability to practice.

Section 5. Sponsors of continuing education programs shall be responsible for obtaining from the board accreditation for their respective continuing education programs.

(1) Programs shall be submitted to the board for review and approval at least thirty (30) sixty (60) days prior to planned participation so the participants can know the value of such an experience prior to actual participation.

(2) Requests for program changes shall be made to and accredited by the board or the evaluation and accreditation of the program becomes null and void.

(3) Repetitious completion of a program shall not entitle the participant to additional continuing education credit.

(4) Sponsors shall maintain for three (3) years records of the names of those participants who complete a program.

Section 6. Sponsors and licensees requesting approval of continuing education for ophthalmic dispensers shall submit an application containing such information as the board may require on forms provided by the board.

Section 7. Submission of fraudulent statements or certificates concerning continuing education shall subject the licensee to revocation or suspension of his license as provided in KRS Chapter 326.

Section 8. Each licensee shall submit, with the annual renewal application, on forms provided by the board, a list of accredited continuing education hours completed by the licensee during the previous license year.

Section 9. (1) Each person registered with the board shall retain proof of attendance and completion of all continuing education requirements. These documents must be retained for a period of three (3) years from the end of the calendar year in which the continuing education was acquired. This documentation shall be produced for inspection and verification, if requested in writing by the board during its verification process. The board shall not maintain continuing education files.

(2) The board shall conduct a randomly selected audit of individual records to assure that the continuing education requirements have been met. An individual’s record may be audited during consecutive renewal periods.

(3) If audited, the individual shall, within fifteen (15) working days of a request from the board, provide evidence of continuing education activities. Such evidence shall be either (submission of one (1) or more of the following):
(a) Certificates verifying the individual’s attendance at the continuing education programs described above; an individual submitting a certificate as evidence of attendance at a continuing education program shall also be required to submit two (2) or more of the following for each program certified:
   1. Registration receipt;
   2. Signed program;
   3. Canceled check;
   4. Hotel bill;
   5. Name badge; or
   6. An original letter on official stationery signed by a professional associate who attended;
(b) An original letter on official institution stationery from the instructor of the college level course verifying that the course was completed and listing the number of credit hours of attendance completed by the individual; or
(c) (6)] An official transcript verifying credit hours earned. One (1) semester credit hour is equivalent to six (6) continuing education hours for the purpose of licensure renewal. [Credit for attendance will be for the actual clock hours in attendance, not to exceed the academic credit.]

Section 10. Upon proper application to the board, a licensee may be granted a deferral on a year-to-year basis at the discretion of the board for reasons of illness, incapacity, or other similar extenuating circumstances. [A licensee shall be exempt from the continuing education provisions for the calendar year during which his license is first issued by the board.]

Section 11. Each licensee shall keep the board informed of his correct address and place of employment. The board must be informed in writing of any changes to the licensee’s address or place of employment.

GRANVILLE SMITH, Chair
APPROVED BY AGENCY: September 13, 2000
FILED WITH LRC: November 14, 2000 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 28, 2000, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 21, 2000, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40620-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nancy Black

(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation sets forth the elements of the continuing education program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the elements of the continuing education program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute provides for continuing education for licensees.
(d) How this administrative regulation currently assists or will as-
assist in the effective administration of the statutes: The regulation will allow the board to identify how licensees will comply with the continuing education requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment will specify the mechanism for obtaining approval for continuing education courses.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to specify the mechanism for obtaining approval for capturing education courses.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute provides for continuing education for licensees.

(d) How the amendment will assist in the effective administration of the statutes: By identifying the means by which continuing education courses can be approved by the board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently licenses approximately 650 ophthalmic dispensers and 240 ophthalmic dispenser apprentices.

(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: Groups will be able to identify the means by which continuing education courses can be submitted to the board for approval.

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

(a) Initially: No additional administrative costs will be incurred in implementing this regulation.

(b) On a continuing basis: No additional administrative costs will be incurred in implementing this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by applicants and licensees.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all licensees.

KENTUCKY BOARD OF OPHTHALMIC DISPENSERS
(Amendment)

201 KAR 13:060. Military service; reciprocity.

RELATES TO: KRS 326.020, 326.040
STATUTORY AUTHORITY: KRS 326.020(3), 326.040
NECESSITY, FUNCTION, AND CONFORMITY: To provide for necessity of renewal of licenses by members of the military service and to provide reciprocity between the states.

Section 1. Military Service. Any license holder who is in the military service is exempt from renewing his license until he is honorably discharged from the service.

Section 2. Reciprocity. (1) Any citizen of the United States who has been issued a license by the appropriate authority of their state to practice ophthalmic dispensing and who has been actively engaged in the active practice of ophthalmic dispensing for two (2) years, next preceding his application may be licensed by the Kentucky Board of Ophthalmic Dispensers without examination and without having spent two (2) years as an apprentice under the supervision of an ophthalmic dispenser, physician, osteopath or optometrist; provided, however, that his qualifications for licensing in his state were at the time of the issuance of said license equal to or higher than those requirements for the issuance of a license in the State of Kentucky.

(2) The foreign applicant shall file with the Kentucky Board of Ophthalmic Dispensers on the form provided for licensing, such information as shall be required thereon, together with a fee of fifty (50) [twenty-five (25)] dollars, no part of which shall be returned; and shall file with the said board three (3) affidavits attesting to the good moral character of said applicant.

(3) Applicants for a reciprocal license shall take and pass the examination required under 201 KAR 13:040, Section 6. [The board in its discretion may require the personal attendance of the applicant before it or one of its members to interrogate him in such way and manner as is desired to finally ascertain his fitness for licensing in this state.]

GRANVILLE SMITH, Chair
APPROVED BY AGENCY: September 13, 2000
FILED WITH LRC: November 14, 2000 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 28, 2000, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 21, 2000, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-3296 ext. 224; Fax: (502) 564-4816.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nancy Black

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the criteria for the exemptions for military service personnel, and for qualifying for reciprocity.

(b) The necessity of this administrative regulation: To identify the necessity of renewal of licenses by members of the military service, and to clarify the process whereby persons properly licensed in other states can receive a license in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires that applicants for licensure shall pay an application fee of $50.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation specifies the requirements for persons in the military and person licensed in other states which the board follows when processing these applications.

(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 regulation increases the fee for out of state applicants for reciprocal licenses.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to cover the costs associated with processing applications from individuals licensed in other states.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute requires that applicants for licensure shall pay an application fee of $50.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is necessary to cover the costs associated with processing applications from individuals licensed in other states.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board currently licenses approximately 650 ophthalmic dispensers and 240 ophthalmic dispenser apprentices.
(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: The fee for applicants who are licensed in other states and who are applying for licensure will be increased by $25 to a total of $50.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional costs will be incurred in implementing this regulation.
(b) On a continuing basis: No additional costs will be incurred in implementing this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by applicants and licensees.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation increases the fee for out of state applicants from $25 to $50.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

BOARD OF PHYSICAL THERAPY
(Amendment)


RELATES TO: KRS 327.050, 327.060, 327.080
STATUTORY AUTHORITY: KRS 327.040
NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to define clearly the procedure for issuing licenses. This administrative regulation standardizes the administrative procedures involved in granting a physical therapy license through the various means of qualifying.

Section 1. Any candidate for licensure by examination shall first satisfy all application requirements, including payment of the application fee (and examination fees) established in 201 KAR 22:135.

(1) The initial examination fee covers the first scheduled examination.

(2) The cost of the examination to the board plus [An administrative fee of ten (10) dollars shall be paid to the board by the applicant seeking for] reexamination [or for an examination which was obtained upon application by a candidate but was not completed by the candidate].

(3) Upon approval as a candidate by the board, the board shall grant approval to sit for the National Physical Therapy Examination (NPTE) [forward the candidate's computer-based testing application to the Professional Examination Service (PES)]. The PES shall register the person for licensure by examination, and shall notify the person of the method to select the date, place and time of the National Physical Therapy Examination (NPTE); a computer-based examination.

(4) An examination candidate may make a written request to the board to be granted a one (1) time exemption from taking their scheduled examination due to undue hardship. If the request is granted, the candidate may continue to practice until the next examination can be scheduled.

Section 2. When the credentials of the applicant are in order, application fee submitted, approval to sit for the examination has been granted by the board [and examination fees submitted] and the board is in receipt of a completed "Supervisory Agreement Statement," [then] a temporary permit shall be issued to be in force until the results of that examination are received for [by] the candidate.

Section 3. (1) A temporary permit requires that the physical therapist applicant shall work only under the supervision of a physical therapist licensed and practicing in Kentucky.

(2) Supervision requires the responsible therapist to be available and accessible by telecommunication at all times during the working hours of the person with a temporary permit.

(3) The supervising therapist shall be responsible for the direction of the actions of the person supervised when services are performed by the person with a temporary permit including constructing all evaluations and physical therapy recordings within fourteen (14) days.

(4) The date of the record review shall be noted.

(5) The board may issue a temporary permit only to:
(a) Graduates who have applied for licensure by examination, have met all requirements and are sitting for the NPTE.
(b) Foreign-educated [trained] physical therapist applicants who have met all requirements for licensure application provided for in KRS 327.060(2), except that the applicant has not yet taken the NPTE or has not yet begun or completed the mandatory, (see (1) year of board approved, supervised employment as a physical therapist established in 201 KAR 22:070.
(c) Graduates who have been accepted as a candidate for licensure by computer-based examination in another state and who have met all requirements for Kentucky application but who have not yet taken that examination.

(6) The board may require any applicant for a temporary permit to submit, or cause to be submitted, a NPTE test verification history service report with the board before the applicant is eligible to receive a temporary permit.

Section 4. The following candidates shall be ineligible to practice as a physical therapist in any manner in Kentucky until they have successfully completed the board approved examination in this or another state:

(1) A person who has failed the NPTE in this or another state or country.

(2) A person who had qualified as an examination candidate but who did not sit for or complete the scheduled examination;

(3) An endorsement candidate whose NPTE scores do not meet Kentucky's requirements.

Section 5. Candidates examined by boards of other states and territories shall have registered with the Federation of State Boards of Physical Therapy (FSBPT) Score Transfer Service [Interstate Reporting Service of the Professional Examination Service] to have their examination results submitted to the board.

Section 6. The candidate for licensure by endorsement shall submit the regular license application form and pay the application fee established in 201 KAR 22:135.

(1) The Kentucky State Board of Physical Therapy shall endorse a candidate who has taken the NPTE [prepared before July 7, 1995 or beginning in 1993 by the Professional Examination Service, or between November 1989 and December 1992 by Assessment Systems; Incorporated;] whose score meets the board's requirements and whose physical therapy license has never been revoked or suspended, and is currently not on probation or under disciplinary review in another state.

(2) To be considered for licensure, a person examined prior to July 1, 1993 shall have achieved a score on the NPTE at least equal to the national average raw score minus one and five-tenths (1.5) standard deviation set equal to a converted score of seventy-five (75); and thereafter, the criterion referenced passing point recommended by the FSBPT [Federation of State Boards of Physical Therapy] set equal to a scaled score of 600.

(3) Other examinations as determined by the board may be administered in lieu of, or in addition to the NPTE.

Section 7. The candidate for licensure through reinstatement may receive renewal of his license without further examination upon request and payment of any fee required of a license renewal applicant in 201 KAR 22:040. The payment of the reinstatement fee established in 201 KAR 22:135. Therapists who have not been licensed for three (3) years shall, in addition, be required to show evidence of professional competency and provide verification that any license to practice in another state has not been disciplined or is not under current disciplinary review. Reinstatement of the candidate shall
be at the board’s discretion after evaluation of said evidence.

Section 8. A license, which shall be in effect until March 31st of the next uneven numbered year shall be issued by the board when it receives notice from the FSBPT [Professional Examination Service] that the candidate by examination has received a passing grade which shall be set based on the criteria referenced passing point set equal to a scaled score of 600, and when candidates by endorsement and foreign-educated [trained] candidates have met all requirements.

Section 9. The executive director [secretary] of the board may function administratively to review, process and interpret all applications received by the board and correspond with the applicants accordingly.

Section 10. (1) "Supervisory Agreement Statement for Physical Therapists 04-12-90" is incorporated by reference.
(2) This form may be inspected, copied, or obtained at the board office at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, between 8 a.m. to 4:30 p.m.

JOAN S. DALTON, Chairman
APPROVED BY AGENCY: July 13, 2000
FILED WITH LRC: October 23, 2000 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 2000 at 9 a.m. (EST) at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2000, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Rebecca Klusch, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159,(502) 327-8497. Fax: (502) 423-0934.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Becky Klusch, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets out the licensing requirements for physical therapist.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the specifics for licensing physical therapist requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the specifics for licensing physical therapist requirements.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment clarifies the provider approval process.
(b) The necessity of the amendment to this administrative regulation: To clarify requirement for licensing physical therapist for public protection.
(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing procedures.
(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of a physical therapist to become licensed in the state of Kentucky.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2200.
(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: The changes to the application requirements are minimal.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional costs to the agency in implementing this administrative regulation.
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency General Government 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 in fees will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or indirectly increase any fee.
(9) Tiering: Is tiering applied? Tiering was not used since to do so would be unconstitutional.

BOARD OF PHYSICAL THERAPY
(Amendment)
201 KAR 22:106. Assistant’s certification procedure.
RELATES TO: KRS 327.040
STATUTORY AUTHORITY KRS 327.040
NECESSITY, FUNCTION, AND CONFORMITY: Because certification may be achieved in several ways, this administrative regulation defines the types of candidate[s] and procedure for making application to the State Board of Physical Therapy as a candidate for certification by a physical therapist’s assistance.

Section 1. The fee for application for certification is [and the examination fee are] established in 201 KAR 22:135. Upon approval as a candidate by the board, the board shall grant approval to sit for the National Physical Therapy Examination (NPTE), forward the candidate’s computer-based testing application to the Professional Examination Service (PES). The PES shall register the person for certification by examination; and shall notify the person of the method to select the date, place and time of the National Physical Therapy Examination (NPTE); a computer-based examination.

Section 2. When the credentials of the applying candidate in order, application for certification and examination are approved [and examination fees submitted] and the board is in receipt of a completed "Supervisory Agreement Statement", [then] a temporary permit shall be issued to be in force until the results of that examination are received, processed, and the candidate has been notified of the results.
(1) A temporary permit requires that the physical therapist’s assistant candidate work only with on-site supervision of a physical therapist licensed in Kentucky who shall cosign and date all of the physical therapist’s assistant’s physical therapy patient records within seven (7) days of the recording.
(2) The board may issue a temporary permit to:
(a) Graduates who have applied for certification by examination, have met all requirements and are sitting for the NPTE.
(b) Graduates who have been accepted as a candidate for certification by NPTE in another state that [which] participates in computer-based testing and who have met all requirements for Kentucky application, but have not yet taken the examination.
(3) The board may require any applicant for a temporary permit to submit, or cause to be submitted, a NPTE test verification history service report with the board before the applicant is eligible to receive a temporary permit.

Section 3. (1) The following candidates shall be ineligible to practice as a physical therapist’s assistant in any manner in Kentucky until they have successfully completed the board approved examination in
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Section 8. Certification, which shall be in effect until March 31 of the next uneven numbered year shall be issued by the board when candidates for certification by endorsement and reinstatement have met all requirements and the board has received notice from the FSBPT (Professional Examination Service) that the candidate by examination has received a passing grade of at least the criterion referenced passing point recommended by the FSBPT (Federation of State Boards of Physical Therapy) set equal to a scaled score of 600.

Section 9. (1) "Supervisory Agreement Statement for Physical Therapist's Assistants 04-12-50" is incorporated by reference.

(2) This form may be inspected, copied, obtained, or obtained at the board office at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, Monday through Friday, between 8 a.m. to 4:30 p.m.

JOAN S. DALTON, Chairman
APPROVED BY AGENCY: July 13, 2000
FILED WITH LRC: October 23, 2000 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 2000 at 9 a.m. (EST) at 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Rebecca Klusch, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5159, (502) 327-8497. Fax: (502) 423-0934.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets out the licensing requirements for physical therapist's assistant's certificate.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 327.040(12).
(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the specifics for certifying physical therapist's assistants requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the specifics for certifying physical therapist's assistants requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment clarifies the provider approval process.
(b) The necessity of the amendment to this administrative regulation: To clarify requirement for certifying physical therapist's assistants for public protection.
(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing procedures.
(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of a physical therapist's assistant to become certified in the state of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1100.

(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: The certification requirements are minimal.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional costs to the agency in implementing this administrative regulation.
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency General Government 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 in fees will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or indirectly increase any fee.
(9) Tiering: Is tiering applied? Tiering was not used since to do so would be unconstitutional.

KENTUCKY REAL ESTATE APPRAISERS BOARD
(Amendment)

201 KAR 30:010. Definitions for 201 KAR Chapter 30.

RELATES TO: KRS 324A.010, 324A.035, 324A.040
STATUTORY AUTHORITY: KRS 324A.035
Necessity, function, and conformity: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public. The function of this administrative regulation is to define the terms used in 201 KAR Chapter 30.

Section 1. (1) "Board" means the Kentucky Real Estate Appraisers Board.
(2) "Certified general real property appraiser" means an appraiser who has fulfilled the requirements for certification established by the board to appraise all real property in connection with federally and nonfederally related transactions.
(3) "Certified residential real property appraiser" means an appraiser who has fulfilled the requirements for certification established by the board to perform appraisals of one (1) to four (4) residential units and nonresidential real property that has a transaction value less than $250,000 in connection with federally and nonfederally related transactions.
(4) "Classroom hour" means fifty (50) minutes actual classroom instruction.
(5) "Federal financial institutions regulatory agencies" means the:
(a) Board of Governors of the Federal Reserve System;
(b) Federal Deposit Insurance Corporations;
(c) Office of the Comptroller of the Currency;
(d) Office of Thrift Supervision; and
(e) National Credit Union Administration.
(6) "Federally related transaction" means a real estate-related financial transaction that a federal financial institutions regulatory agency or the Resolution Trust Corporation:
(a) Engages in; or
(b) Contracts for; or
(c) Regulates; and
(d) For which it requires the services of:
1. Certified general real property appraiser;
2. Certified residential real property appraiser; or
3. Licensed real property appraiser.
(7) "Licensed real property appraiser" means an appraiser who has fulfilled the requirements for licensure established by the board to appraise real property in connection with federally and nonfederally related transactions.
(8) "Licensed nonfederal real property appraiser" means an appraiser who has fulfilled the requirements for licensure established by the board to appraise nonfederally related transactions.
(9) "Real estate-related financial transaction" means any transaction that involves the:
(a) Sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;
(b) Refinancing of real property, or interests in real property; and
(c) Use of real property, or interests in property, as security for a loan or investment, including mortgage-backed securities.
(10) "Residential" means one (1) to four (4) residential units.
(11) "Trainee real property appraiser" means an appraiser who has fulfilled the requirements for licensure as a trainee real property appraiser established by the board to appraise real property in connection with federally and nonfederally related transactions.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sam Blackburn
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation defines terms used in this chapter.
(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administration defines terms that are used in the regulatory chapter.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment clarifies the definition for "certified residential real property appraiser".
(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is clarify the definition and to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.
(d) How the amendment will assist in the effective administration of the statutes: The definition amended in this regulation will enable the board to clarify terms used in 201 KAR chapter 30.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately one thousand five hundred persons certified by the board.
(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: These groups will be better able to understand terms used in the regulations.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No new costs will be incurred by the changes.
(b) On a continuing basis: No new costs will be incurred by the changes.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. The board's operations are funded by fees paid by certificate holders.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this regulation.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
(f) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

KENTUCKY REAL ESTATE APPRAISERS BOARD

(Amendment)

201 KAR 30:030. Types of appraisers required in federally-related transactions; certification and licensure.

RELATES TO: KRS 324A.010, 324A.030, 324A.035, 324A.045, 324A.065

STATUTORY AUTHORITY: KRS 324A.030, 324A.035

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public. The function of this administrative regulation is to establish the: (1) types of appraisers required in federally related transactions; (2) scope of the practice; and (3) general requirements for certification or licensure.

Section 1. Types of Appraisers. An appraiser for a federally related transaction shall be a:

(1) Certified general real property appraiser;
(2) Certified residential real property appraiser;
(3) Licensed real property appraiser; or
(4) Trainee real property appraiser.

Section 2. Scope of Practice. (1) A certified general real property appraiser may perform appraisals of all types of real property regardless of transaction complexity or value.
(2) A certified residential real property appraiser may perform residential appraisals of one (1) to four (4) units and nonresidential real property that has a transaction value less than $250,000 regardless of transaction complexity or value.
(3) A licensed real property appraiser may perform appraisals of:
(a) Noncomplex, one (1) to four (4) residential units that have a transaction value of less than $1,000,000;
(b) Complex, one (1) to (4) residential units that have a transaction value of less than $250,000; and
(c) Nonresidential real property that has a transaction value of less than $250,000.

(4) Trainees. A trainee real property appraiser may perform appraisals of those properties which the supervising appraiser of the trainee is permitted to appraise and shall be subject to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

(b) Separate appraisal logs shall be maintained for each supervising appraiser.
(c) The trainee real property appraiser shall record in the log for each appraisal the following:
1. Type of property;
2. Client name and address;
3. Address of appraised property;
4. Description of work performed;
5. Number of hours worked; and
6. Signature and state license or certification number of the supervising appraiser.

(d) The trainee real property appraiser shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.
(e) The supervising appraiser shall have been [be] licensed or certified by the board for a period of one (1) year, and in good standing with the board and shall be responsible for the training and supervision of the trainee real property appraiser.

(f) The supervising appraiser shall by:
1. Accept [Accepting] responsibility for appraisal reports by the trainee real property appraiser by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040;
2. Review [Reviewing] reports by the trainee real property appraiser;
3. Personallly inspect [inspecting] each appraised property and the comparable sales with the trainee real property appraiser on the trainee's first fifty (50) real property appraisal assignments to ensure that the trainee [until the supervising appraiser determines that the trainee real property appraiser is] competent and acting in accordance with the competency provision of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040 for the property type.

4. Allow a trainee real property appraiser who has completed the fifty (50) appraisal assignments required by 201 KAR 30:030, Section 2 (4)(9) to inspect properties located within fifty (50) miles of the supervisor's office without being accompanied by the supervisor, provided the supervisor has determined that the trainee real property appraiser is competent to perform such appraisals.

5. Accompany and personally inspect each appraised property and the comparable sales with the trainee real property appraiser on all appraisal assignments located more than fifty (50) miles from the supervisor's office within twelve (12) months following the date of issuance of the trainee real property license.

(g) A supervising appraiser shall:
1. Be limited to a maximum of three (3) real property trainees at a time; and
2. Immediately notify the board when the supervision of a real property trainee has terminated.

(h) Persons otherwise qualified to be supervising appraisers who have been disciplined by the board under KRS 324A.050 shall not be the option of the board:
1. Be prohibited from supervising trainee real property appraisers;
2. Be limited to the number of trainee real property appraisers they may supervise; and
3. Be required to take additional courses approved by the board before being permitted to supervise a trainee real property appraiser.

(i) A trainee real property appraiser shall submit to the board two (2) complete summary appraisal reports:
1. The reports shall be submitted to the board six (6) months and twelve (12) months following the date of issuance of the trainee real property license.
2. The board shall have the right to request additional reports from the trainee real property appraiser.

Section 3. General Requirements for Certification or Licensure. Certification or licensure, as appropriate, of the types of appraisers specified in Section 1 of this administrative regulation, shall be granted if an applicant:

1. Has met the examination, education, experience, and fee requirements established by the provisions of 201 KAR 30:050 and 201 KAR 30:060; and
2. Applies to the board on the "Appraiser License/Certification Application Form."

Section 4. Incorporation by Reference. (1) "Appraiser License/Certification Application" (September, 2000 [July, 1992]) is incorporated by reference.

2. It may be inspected, copied, or obtained at the Kentucky Real Estate Appraisers Board, 1025 Capital Center Drive, Suite 100, 1-138.
On a continuing basis: No new costs will be incurred by the changes.

What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

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

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.

TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

FEDERAL MANDATE ANALYSIS COMPARISON

Federal statute or regulation constituting the federal mandate. 12 USC 3331, 3336, and 3339 and 12 CFR 225.64 and 225.65.

State compliance standards. This administrative regulation establishes the types of appraisers required in federally related transactions, the scope of practice, and general requirements for certification or licensure.

Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the minimum criteria for certification and licensure of real estate appraisers as promulgated by the Appraisal Qualification Board of the Appraisal Foundation.

Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

KENTUCKY REAL ESTATE APPRAISERS BOARD

(Amendment)

201 KAR 30:040. Standards of practice.

RELATES TO: KRS 324A.035, 324A.050(10), 12 CFR 225.64, 225.65, 12 USC 3331, 3336, 3339

STATUTORY AUTHORITY: KRS 324A.035(3)(d), 12 CFR 225.64, 225.65, 12 USC 3331, 3336, 3339

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 USC 3331, 3336, and 3339 and 12 CFR 225.64 and 225.65 require that real estate appraisals in connection with federally related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the standards of professional practice. This administrative regulation establishes requirements that are no more stringent than the federal law requirements.

Section 1. A licensed nonfederal real property appraiser shall not be required to comply with the "Uniform Standards of Professional Appraisal Practice."

Section 2. A certified general real property appraiser, a certified residential real property appraiser, a licensed real property appraiser, and a trainee real property appraiser shall comply with the "Uniform Standards of Professional Appraisal Practice."

Section 3. An appraisal report that is made with regard to a federally related transaction shall be in writing.

(2) It may be inspected at the Kentucky Real Estate Appraisers Board, 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky 40601-8205 [2624 Research Park Drive, Room 306, Lexington, Kentucky 40511-6480], telephone: (502) 573-0091 [1600]-246-2017, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) It may be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1020 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005-3517, telephone: (202) 347-7722.

GEORGE K. COX, Chair
APPROVED BY AGENCY: September 22, 2000
FILED WITH LRC: November 13, 2000 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 28, 2000, at 1 p.m., at 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 19, 2000, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Sam Blackburn, Executive Director, Kentucky Board of Real Estate Appraisers, 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky; Telephone No. (502) 573-0091; Telefax No. (502) 573-0093.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sam Blackburn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards of practice for certified and licensed appraisers.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Federal Institutions Reform, Recovery and Enforcement Act of 1989 and to identity the standards of practice required of certified and licensed appraisers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the standards of practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation will assist the board in administering this program by identifying the standards of practice required of certificate holders.

(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 eliminates the reference to the prior edition of the Uniform Standards of Professional Appraisal Practice.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to specify the standards of practice for certificate holders.

(c) The amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statute: The standards of practice will assist by clearly identifying the practice required of certificate holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately one thousand five hundred persons certified by the board.

(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: No impact will be felt by this amendment as the certificate holders have uniformly been required to meet the same standards identified by this amendment.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 USC 3331, 3336, and 3339 and 12 CFR 225.64 and 225.65.

(2) State compliance standards. This administrative regulation requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

KENTUCKY REAL ESTATE APPRAISERS BOARD

(Amendment)

201 KAR 30:050. Examination, education, and experience requirement.

RELATES TO: KRS 324A.035(1), (3), 324A.040(2)

STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3), 324A.040(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(3) (d), (e), and (f) requires the board to establish by administrative regulations requirements for experience, examination of applicants, and the continuing education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 USC 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the examination, education, and experience requirements for appraisers of real property in federally-related transactions.

Section 1. Examination. An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, and licensed real property appraiser shall pass an examination that is specific for the certification or license applied for and has been approved by:

(1) The board; and

(2) The Appraiser Qualifications Board of the Appraisal Foundation.

Section 2. Required Hours of Instruction. (1) An applicant for the
certified general real property appraiser examination shall have completed 180 hours of approved instruction. 

(2) An applicant for the certified residential real property appraiser examination shall have completed 120 hours of approved instruction. 

(3) An applicant for the licensed real property appraiser examination shall have completed ninety (90) hours of approved instruction. 

(1) An applicant for a license as a trainee real property appraiser shall have completed seventy-five (75) hours of approved instruction. 

(5)(a) Completed hours of instruction for one (1) type of appraiser may be credited to the number of hours of approved instruction required for another type of appraiser. 

(b) Required hours of instruction shall have been completed prior to examination. 

(6) The required hours of instruction for every applicant shall: 

(a) Include at a minimum: 

1. [At least] Fifteen (15) hours related to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040; and 

2. After September 15, 2000, fifteen (15) hours related to basic income. 

(b) Be completed in an orderly progression of appraisal concepts and coursework commencing with basic appraisal courses and progressing to advanced courses. 

1. The initial instructional course shall cover basic principals of appraising; 

2. The fifteen (15) hours of instruction required by this section on the Uniform Standards of Professional Appraisal Practice shall not be taken until after the instructional course covering basic principals of appraising has been completed. 

Section 3. Approved Instruction. Approved instruction for certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall be subjects related to real estate appraisal that:

(1) Include coverage of the "Uniform Standards of Professional Appraisal Practice" of the Appraisal Standards Board of the Appraisal Foundation, incorporated by reference in 201 KAR 30:040; and 

(2) For licensed real property appraisers and certified residential real property appraisers, place particular emphasis on the appraisal of one (1) to four (4) unit residential properties; 

(3) For certified general real property appraisers, place particular emphasis on the appraisal of nonresidential properties; and 

(4) Include coverage of: 

(a) Influences on real estate value; 

(b) Legal considerations in appraisal; 

(c) Types of value; 

(d) Economic principles; 

(e) Real estate markets and analysis; 

(f) Valuation process; 

(g) Property description; 

(h) Highest and best use analysis; 

(i) Appraisal statistical concepts; 

(j) Sales comparison approach; 

(k) Site value; 

(l) Cost approach; and 

(m) Income approach, including: 

1. Gross rent multiplier analysis; 

2. Estimation of income and expenses; 

3. Operating expense ratios; and 

4. Direct capitalization; 

(n) Valuation of partial interests; 

(o) Appraisal standards and ethics; and 

(p) Narrative report writing. 

Section 4. Credit for Instruction. (1) Credit for instruction shall be granted if: 

(a) It is approved by the board; 

(b) It complies with the provisions of this administrative regulation; 

(c) It is documented by the applicant; 

(d) It is a course that requires at least fifteen (15) hours of instruction; and 

(e) An applicant has passed a written examination of the subject matter of the course. 

(2)(a) Credit toward the classroom hour requirement may be granted to a teacher of appraisal courses. 

(b) A teacher of appraisal courses who wishes to receive credits shall: 

1. File a written request with the board for receipt of credit; 

2. Document the appraisal courses taught by title, date, place taught, and length of course; and 

3. Elect to receive credit for either the: 

(a) Classroom hour requirement; or 

(b) Experience requirement. 

(3) The board shall grant credit for courses to an applicant in which: 

(a) The applicant received credit from the course provider by challenge examination; 

(b) The credit was granted by the course provider prior to July 1, 1990; and 

(c) The board is satisfied with the quality of the challenge examination that was administered by the course provider. 

Section 5. Approved Providers of Instruction. (1) Instruction may be obtained from approved: 

(a) Colleges or universities; 

(b) Community or junior colleges; 

(c) Real estate appraisal or real estate related organizations; 

(d) State or federal agencies or commissions 

(e) Proprietary schools or 

(f) Other providers. 

(2) A provider shall be approved by the board if the provider: 

(a) Applies to the board for approval on the "Appraisal Education Provider Application Form"; and 

(b) Is determined by the board to be a qualified appraisal education provider. 

Section 6. Required Experience. (1)(a) Prior to certification as a general real property appraiser, an applicant shall have acquired 3,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than thirty (30) calendar months. 

(b) Prior to certification as a residential real property appraiser, an applicant shall have acquired 2,500 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months. 

(c) Prior to licensure as a licensed real property appraiser, an applicant shall have acquired 2,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months. 

(d) The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience. 

(e) For certification as a general real property appraiser, at least 1,500 hours of the appraisal experience shall consist of nonresidential appraisal experience. 

(2)(a) An applicant shall verify experience credit on forms approved and provided by the board. 

(b) The board may request reports, file memoranda, and other documentation of appraisal experience. 

Section 7. Continuing Education; Number of Hours Required. (1) Certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall: 

(a) Complete fourteen (14) hours of approved continuing education each license year; and 

(b) Furnish the board with proof of compliance. 

(2) Trainee real property appraisers who remain in this classifica-
tion in excess of two (2) years shall be required in the third and successively years to:
(a) Complete fourteen (14) hours of approved continuing education before license renewal each license year; and
(b) Furnish the board with proof of compliance.

Section A Continuing Education. (1) Continuing education credit may be granted for:
(a) Approved continuing education courses; or
(b) For participation, other than as a student, in appraisal educational programs and processes.
(2) Appraisal educational programs and processes shall include:
(a) Teaching;
(b) Program development;
(c) Authorship of textbooks; or
(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.
(3) Continuing education credit shall be granted if a course:
(a) Is at least two (2) hours in duration;
(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and
(c) Has been approved by the board.
(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.

(2) It may be inspected, copied, or obtained at the Kentucky Real Estate Appraisers Board, 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky 40601-8225 (2624 Research Park Drive; Room 306; Lexington; Kentucky 40511-6428); telephone: (502) 573-0091 [6998-2845-2817], Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE K. COX, Chair
APPROVED BY AGENCY: September 22, 2000
FILED WITH LRC: November 13, 2000 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 28, 2000, at 1 p.m., at 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by December 19, 2000, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Sam Blackburn, Executive Director, Kentucky Board of Real Estate Appraisers, 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky; Telephone No. (502) 573-0091; Telefax No. (502) 573-0093.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Sam Blackburn
(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation establishes the examination, education, and experience requirements for certification.
(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the examination, education, and experience requirements for certified and licensed appraisers.
(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the examination, education, and experience requirements.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the examination, education, and experience requirements for applicants.
(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 specifies certain courses required for certification.
(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to specify the course requirements for applicants.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary for certification.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by clearly identifying the educational requirements for applicants.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately three hundred persons currently training for certification by the board.
(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: Applicants will be better trained for certification and the organized course of study envisioned by the regulation will reduce the number of failing grades on the examination.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No new costs will be incurred by the changes.
(b) On a continuing basis: No new costs will be incurred by the changes.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

FEDERAL MANDATE ANALYSIS COMPARISON
(1) Federal statute or regulation constituting the federal mandate, 12 USC 3331, 3336, and 3339 and 12 CFR 225.64 and 225.66.
(2) State compliance standards. This administrative regulation institutes the education, experience and continuing education requirements that meet the standards promulgated by the Appraisal Qualification Board of the Appraisal Foundation.
(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the minimum criteria for certification and licensure of real estate appraisers as promulgated by the Appraisal Qualification Board of the Appraisal Foundation.
(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.
VOLUME 27, NUMBER 6 – DECEMBER 1, 2000

KENTUCKY REAL ESTATE APPRAISERS BOARD
(Amendment)

201 KAR 30:060. Fees administrative regulation.

RELATES TO: KRS 324A.020, 324A.035, 324A.040, 324A.045, 324A.050.

STATUTORY AUTHORITY: KRS 324A.040, 324A.045, 324A.065.

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3331), KRS Chapter 324A to set policies and procedures and to protect the public. The function of this administrative regulation is to establish the fees for initial application, annual renewal, roster, and examination, both for federally and nonfederally related transactions.

Section 1. Fees required by KRS 324A.065(1) and (2) shall be submitted with the application or request.

Section 2. (1) The renewal date for certificates and licenses shall be July 1 of each calendar year.

(2) The fees required for annual renewal of certificates and licenses shall be submitted by certificants or licensees on or before July 1 of each calendar year.

Section 3. The roster fee shall be paid with the application or renewal fee.

Section 4. Examination fees shall be paid prior to an examination.

Section 5. Fees. (1) Federally-related transactions:

(a) Initial application fee: $212 [369];

(b) Examination fee: $200;

(c) An annual certificate or licensure fee: $212 [369];

(d) Duplicate certificate fee: ten (10) dollars;

(e) Certificate correction fee: ten (10) dollars;

(f) Roster fee not to exceed fifty (50) dollars.

(2) Nonfederally-related transactions:

(a) Initial application fee: $100;

(b) Examination fee: $100;

(c) An annual certificate or licensure renewal fee: $100;

(d) Duplicate certificate fee: five (5) dollars;

(e) Certificate correction fee: five (5) dollars;

(f) Roster fee: twenty-five (25) dollars.

GEORGE K. COX, Chair
APPROVED BY AGENCY: September 22, 2000
FILED WITH LRC: November 13, 2000 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 28, 2000, at 1 p.m., at 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 19, 2000, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Sam Blackburn, Executive Director, Kentucky Board of Real Estate Appraisers, 1025 Capital Center Drive, Suite 100, Frankfort, Kentucky; Telephone No. (502) 573-0091; Telefax No. (502) 573-0093.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sam Blackburn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for certification by the board.

(b) The necessity of this administrative regulation: This regulation is necessary to administer the program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the authority to set administrative fees within a certain amount, and the amount set herein within that amount.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board by offsetting the cost of providing every licensee with a copy of the Uniform Standards of Professional Appraisal Practice.

(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 increases the fee by twelve dollars to offset the cost of providing every licensee with a copy of Uniform Standards of Professional Appraisal Practice.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to offset the cost of providing every licensee with a copy of the Uniform Standards of Professional Appraisal Practice.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate fees regulations within a certain amount, and the fee will be within that specified amount.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that, by having a copy of the Uniform Standards of Professional Appraisal Practice, licensees will be aware of the standards that are required of them.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 1,500 persons certified by the board.

(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: Certificate holders will continue to have a copy of the standards with which they are required to comply.

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

(a) Initially: The cost of providing a copy of the Uniform Standards of Professional Appraiser Practice is $12. This is exactly the board’s cost of purchasing the copy.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operations are funded by fees paid by certificate holders.

(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 increase in fees required to implement this regulation is set forth therein.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation directly establishes the fees for the board.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 USC 3331, 3336, and 3339 and 12 CFR 225.64 and 225.65.

(2) State compliance standards. This administrative regulation institutes the fees necessary to administer the program in accordance with the federally mandated requirements.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires that the board administer the program in a manner consistent with the federal criteria. These minimum requirements require the board to review applicants to determine if their qualifications meet the standards, and if the appraisals meet the federal standards.

(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 imposition of the stricter standard, or additional
or different responsibilities or requirements. No stricter standard, or
additional or different responsibilities or requirements imposed.

KENTUCKY REAL ESTATE APPRAISERS BOARD
(Amendment)

201 KAR 30:120. Temporary appraisal licenses and certificates.

RELATES TO: KRS 324A.065(1), 324A.075
STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3),
324A.065(1), 324A.075
NECESSITY, FUNCTION, AND CONFORMITY: KRS
324A.035(1) requires the board to establish by administrative regulation
requirements for certification or licensure of appraisers of real
property in federally-related transactions. KRS 324A.035(3)(d), (e),
and (f) requires the board to establish by administrative regulations
requirements for experience, examination of applicants, and the con-
tinuing education of appraisers. KRS 324A.065(1) authorizes the
board to establish fees. KRS 324A.075 authorizes the board to estab-
lish requirements for reciprocity. Title XI of the Financial Institutions
Reform, Recovery and Enforcement Act of 1989, 12 USC 3331-3351,
establishes requirements for certification or licensure of appraisers of
real property in federally-related transactions. This administrative
regulation establishes the requirements for temporary appraisal li-
censes and certificates.

Section 1. A real estate appraiser from another state who is li-
censed or certified by the appraiser licensing or certifying agency in
such state shall [may] apply for registration to receive temporary ap-
praizer licensing or certification privileges in this state by paying a fee
of fifty (50) dollars and filing with the board a notarized application on
a form prescribed by the board for such purpose which shall set forth
and provide:
(a) The applicant's name, address, Social Security number and
such other information as may be necessary to identify the applicant;
(b) A statement under seal issued by the appraiser licensing or
certifying agency in the applicant's resident state setting forth:
(a) The applicant's name, business name and address;
(b) The type license or certificate held by the applicant and the
license or certificate number;
(c) The dates of licensure or certification and the expiration date of
the applicant's current license or certificate;
(d) Whether or not the license or certificate was issued as a result
of passing a licensure/certification examination, by reciprocity, or by
some other means; and
(e) A complete record of any disciplinary actions taken or discipli-
nary proceedings pending against the applicant;
(3) An irrevocable consent that service of process in any action
against the applicant arising out of the applicant's appraisal activities in
this state may be made by delivery of the process on the executive
director of the board;
(4) A statement that the applicant has read and agrees to abide by
all appraiser laws and rules in this state and agrees to cooperate with
any investigation initiated by the board at the direction of the board
including reviewing relevant documents and personally appearing
before the board or its investigators;
(5) Information sufficient to identify the appraisal assignment to be
performed under the temporary practice certificate or license, including
the projected beginning and ending dates for performing such ap-
praizer assignment, but shall not require the applicant to divulge any
information concerning the appraisal assignment which would breach
the applicant's duty of confidentiality to his client under the provisions
of the Uniform Standards of Professional Appraisal Practice, incorpo-
rated by reference in 201 KAR 30:040; and
(6) Such other information as may be necessary to determine the
applicant's eligibility for temporary appraiser licensing or certification
privileges in this state.

Section 2. (1) An applicant shall be granted a temporary practice
certificate or license by the board, to perform the appraisal assignment
described in his application, if:
(a) He has filed a properly completed application;
(b) He has submitted the required fee with the application;
(c) He has satisfied the board as to his qualifications, eligibility,
and moral fitness for temporary licensing or certification privileges; and
(d) The time projected by the applicant for completion of the as-
signment is reasonable, given the scope and complexity of the as-
ignment.
(2) Application for a temporary practice certificate or license shall
be made on board form, "Nonresident Application for Temporary Appra-
aiser Permit".

Section 3. (1) Except as provided by subsection (2) of this section,
licensing and certification privileges granted under the provisions of
this administrative regulation shall expire upon the earlier of the:
(a) Completion of the appraisal assignment described in the applic-
ation for temporary licensing; or
(b) Expiration date set forth in the temporary practice certificate or
license.
(2) To afford an applicant additional time to complete the appraisal
assignment, the board shall extend the licensing or certification privi-
ileges granted under an applicant's temporary practice certificate or
license, if the shows to the board's satisfaction that, notwithstanding his
diligent attention to the appraisal assignment, additional time is
needed to complete the assignment.

Section 4. Persons granted temporary licensing or certification
privileges under the provisions of this administrative regulation shall not
advertise or otherwise hold themselves out as being a Kentucky state-
licensed or state-certified appraiser.

Section 5. Incorporation by Reference. (1) "Nonresident Application
for Temporary Appraiser Permit (2000 [October-1992])" is incorpo-
rated by reference.
(2) This form may be inspected, copied, or obtained at the office of
the Kentucky Real Estate Appraisers Board, 1025 Capital Center
Drive, Suite 100, Frankfort, Kentucky. 40601-0025 (2284 Research
Park Drive, Room 308, Lexington, Kentucky 40511-8486), telephone:
(502) 573-0091 (606) 240-2017, 8 a.m. to 4:30 p.m., Monday through
Friday.

GEORGE K. COX, Chair
APPROVED BY AGENCY: September 22, 2000
FILED WITH LRC: November 13, 2000 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regu-
lation shall be held on December 28, 2000, at 1 p.m., at 1025 Capital
Center Drive, Suite 100, Frankfort, Kentucky. Individuals interested
in attending this hearing shall notify this agency in writing by December
19, 2000, five workdays prior to the hearing, of their intent to attend.
If no notification of intent to attend the hearing is received by that date,
the hearing may be canceled. This hearing is open to the public. Any
person who attends will be given an opportunity to comment on the
proposed administrative regulation. A transcript of the public hearing
will not be made unless a written request for a transcript is made. If
you do not wish to attend the public hearing, you may submit written
comments on the proposed administrative regulation. Send written
notification of intent to attend the public hearing or written comments
on the proposed administrative regulation to: Sam Blackburn, Execu-
tive Director, Kentucky Board of Real Estate Appraisers, 1025 Capital
Center Drive, Suite 100, Frankfort, Kentucky; Telephine No. (502)
573-0091; Telefax No. (502) 573-0093.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Sam Blackburn
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative
regulation establishes the requirements for temporary appraisal li-
censes and certificates.
(b) The necessity of this administrative regulation: This regulation
is necessary to administer the process for obtaining a temporary li-
cense or certificate.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the authority to issue temporary licenses and certificates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board by specifying the requirements for a temporary license or certificate.

(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 makes clear that persons form other states must obtain a temporary certificate in this state.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to make the requirement for a temporary license or certificate mandatory.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to regulate the practice of real estate appraisal in the state.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that persons real estate appraisers who are performing appraisal work for federally related transactions are properly certified.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board presently receives approximately 150 temporary applications per year from persons licensed in other states.

(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: Out-of-state applicants will be required to submit the application.

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

(a) Initially: No additional costs are contemplated.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operations are funded by fees paid by certificate holders.

(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 fee increases will be necessary to implement the change.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all applicants.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 USC 3331, 3336, and 3339 and 12 CFR 225.64 and 225.65.

(2) State compliance standards. This administrative regulation sets out the requirements for temporary licenses and certifications necessary to perform federally related transactions.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires that the board administer the program in a manner consistent with the federal criteria, and that persons performing appraisals involving federally related transactions be properly licensed.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

304 KAR 1:040. Campgrounds.

RELATES TO: KRS 148.021

STATUTORY AUTHORITY: KRS 148.021

NECESSITY, FUNCTION, AND CONFORMITY: 304 KAR 1:040 requires the Department of Parks to enforce highly restrictive rules, policies, and procedures which preclude the degree of flexibility required to provide proper and adequate service to the camping public. The administrative regulation contains obsolete sections and these should be deleted. Upon amendment of this administrative regulation, the Department of Parks will institute new policies to efficiently and effectively cover the obsolete requirements presently stipulated in 304 KAR 1:040. Because of the great number of patrons visiting the state park campgrounds, the Department of Parks finds it necessary to establish an administrative regulation governing the use of its campgrounds. This administrative regulation will allow the department to operate an efficient, orderly campground for the benefit of all the camping public.

Section 1. At all state park campgrounds the following rules shall be observed:

(1) Camping shall be restricted to the campground only, unless otherwise authorized by the park superintendent.

(2) No tent, recreational vehicle, or camping equipment shall be left unattended longer than twenty-four (24) hours without written permission from the park superintendent.

(3) Pets must be kept on a leash at all times, or otherwise restrained. All pets must have current inoculations for rabies as prescribed by the campers' state of residence. Pets shall not be tied to trees or shrubs. Campers must clean up after their pets. Campers unable to control their pets may be asked to leave the campground.

(4) No sewage or garbage from tents or recreational vehicles shall be disposed of on the premises of the campground except at sewage disposal site. Dishes, pots, pans, and silverware may not be washed at spigots or in bathhouses. The washing of vehicles or equipment within the campground is prohibited.

(5) Quiet time begins at 11 p.m. No visitors after 11 p.m. [Campers shall observe quiet hours after 11 p.m.]

(6) Campers shall refrain from hanging lanterns on trees and shrubs. No object may be driven into any tree, shrub, sign, building, or other object or structure in the campground. Trenching or digging in the campground is prohibited.

(7) The use of motorbikes, motorcycles, motor scooters, and off-road vehicles in the campground is restricted to regular roadways for use in entering and exiting only. Joy riding of four (4) wheelers, golf carts, mopeds, and like vehicles is prohibited within the campground. Drivers must be at least sixteen (16) years of age and have a valid driver's license. Vehicles must be properly muffed and must stay on paved roads.

(8) All campsites are assigned on a “first come, first serve” basis. Reservations cannot be accepted. Check out time is 2 p.m.

(9) There is a fourteen (14) day maximum stay unless written waiver by park manager. You may be asked to move to facilitate maintenance on the site. Homesteading practices are prohibited.

(10) All campers must register at the entrance gate or designated area and shall remain on their assigned site unless permission to move is granted by gate attendant. If campers are permitted to select a site of their choice, they must return immediately to the gate attendant and identify their chosen site.

(11) Central service buildings and other facilities in the camping area are for campers and their guests only. No reunions, picnicking or sightseeing by other than registered campers is allowed in campground.

(12) Fires shall be restricted to fire rings in designated areas only and shall be attended at all times.

(13) Vehicles must be parked in campsite spaces and parking lots and must display a “car pass” or “visitor pass”. Do not block adjacent sites or roadways.

(14) Tables shall not be moved from site to site.
VOLUME 27, NUMBER 6 – DECEMBER 1, 2000

KENNY RAPIER, Commissioner
ANN R. LATTA, Secretary
J. PATRICK ABBEL, General Counsel
APPROVED BY AGENCY: November 13, 2000
FILED WITH LRC: November 14, 2000 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on December 22, 2000, at 1 p.m., local time, in the 10th Floor Conference Room of the Department of Parks, 500 Mero Street, Capitol Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2000, five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: J. Patrick Abell, General Counsel, Tourism Development Cabinet, 500 Mero Street, Capitol Plaza Tower, Room 1211, Frankfort, Kentucky 40601, Telephone: (502) 564-2172, ext. 392, Facsimile: (502) 564-1079, E-mail: J.PatrickAbell@mail.state.ky.us

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: J. Patrick Abell, General Counsel

(1) Provide a brief summary of:
(a) What this administrative regulation does: It establishes rules for the use of campgrounds at the state parks.
(b) The necessity of this administrative regulation: Campgrounds must have rules of acceptable conduct to provide for a pleasant camping experience.
(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 148.021 authorizes the Commissioner of Parks to promulgate regulations for the operation of the state parks.
(d) How this administrative regulation currently assists or will assist in the effective administration of the state parks: By providing rules to be followed by campers using the state park campgrounds.
(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 adds fifteen additional rules of conduct.
(b) The necessity of the amendment to this administrative regulation: The existing regulation did not address numerous areas of concern to campers.
(c) How the amendment conforms to the content of the authorizing statute: It more adequately regulates the activities of users of campgrounds.
(d) How the amendment will assist in the effective administration of the statutes: It provides for a more orderly operation of park campgrounds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Park campgrounds have an occupancy in excess of 600,000 per year. It is unknown how many of them are repeat visitors.
(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: Campground users should experience a more pleasing stay with the implementation of these amended regulations.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Current staff will enforce the regulation.
(b) On a continuing basis: These nominal costs will continue on an ongoing basis.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The department’s regular operating budget allocated to the campgrounds.
(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 anticipated at this time.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fee or directly or indirectly increase any fee.
(9) TIERING: Is tiering applied? Tiering was not used as it would be impractical.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:60. Definitions for 401 KAR Chapter 8.

RELATES TO: KRS 223.160 to 223.220, 224.10-100, 224.10-110, [Chapter 223; 224], 40 CFR 141.2, 141.25(c), 141.131
STATUTORY AUTHORITY: KRS 223.160 to 223.220, [Chapter 223; 224], 224.10-100, 224.10-110, 40 CFR Part 141, 141.25(c), 141.131, [444.2-1995], 42 USC[A] 300f, 300g, 300h, 500
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce statutes and administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986 and 1996, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility. The purpose of this administrative regulation is to define terms used by the cabinet in the regulation of public and semipublic drinking water supplies pursuant to KRS Chapter 224 and the Safe Drinking Water Act [PL-93-628], as amended, as well as to regulate certification of public water system operators pursuant to KRS Chapter 223. This administrative regulation conforms to federal regulations if federal regulations have definitions for terms contained in this administrative regulation.

Section 1. The following definitions shall apply to 401 KAR Chapter 8:

(1) "Action level" means:
(a) The concentration of lead or copper in water specified in 401 KAR 8:300, Section 3, which determines, in some cases, the treatment requirement for total dissolved solids contained in 401 KAR 8:300 that a water system shall [is required to] complete.
(b) For the purpose of 401 KAR 8:705: the concentration of a contaminant, which if exceeded, triggers treatment or other requirements that a water system shall follow.
(2) "Approved source" means the source of the water whether it be from a spring, well, public water system, or other source that has
been sampled and the water analyzed, and found to be of a safe and sanitary quality and quantity in accordance with 401 KAR 8:010 through 401 KAR 8:700, inclusive.

(3) "Auxiliary intake" means a piping connection or other device whereby raw water may be secured for treatment from a location or source other than the intake which is normally used.

(4) "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the cabinet finds, after examination for efficacy under field conditions, and not solely under laboratory conditions, are available to the public water system, [flaking cost into consideration]. For the purposes of setting maximum contaminant levels for synthetic organic chemicals, BAT shall be at least as effective as the generally accepted practices.

(5) "Blood lead level" or "PbBl level" means the concentration of lead in the blood as measured in micrograms of lead per deciliter of blood, or mg/dl (mg/kg/dl).

(6) "Board" means the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators.

(7) "Boil water advisory" or "consumer advisory" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to the consuming public the quickest manner possible information that water provided by a system may cause adverse human health effects if consumed. The advisory shall include information concerning all actions which the affected public is advised to take.

(8) "Boil water notice" means a notice to the consuming public through radio, television, direct mail, posting, newspaper or other media to convey to the consuming public in the quickest manner possible information that water provided by a system is unfit for human consumption unless first boiled for three (3) minutes at a rolling boil.

(9) "Bottled water" means water that is from an approved bottled water treatment plant and is placed in a sealed container or package and is offered for human consumption or other consumer uses.

(10) "Bottled water system" means a water system which provides bottled drinking water. The term includes, but is not limited to, the sources of water, and treatment, storage, bottling, manufacturing, or distribution facilities. The term excludes a public water system which provides only a source of water supply for a bottled water system and excludes an entity providing only transportation, distribution or sale of bottled water in sealed bottles or other sealed containers. Except for the purpose of 401 KAR 8:075, a bottled water system [systems] shall be designated as a community public water system [systems].

(11) "Bottled water treatment plant" means a facility which provides the product water used for bottled water by processing water from an approved source.

(12) "Bypass" means a physical arrangement whereby water may be diverted around any feature of the purification process of a public or semipublic water supply.

(13) "Cabinet" means the Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water, or its successor.

(14) "Certificate" means a certificate of competency issued by the secretary or his designated agent stating that the operator has met all requirements for the specified operator classification as set by these administrative regulations.

(15) "Certified laboratory" means a laboratory where the physical, instrumental, procedural, and personnel capabilities have been approved by either the U.S. Environmental Protection Agency or the cabinet. A laboratory may be certified for one (1) or more types of the contaminants listed in these administrative regulations or for one (1) or more of the specific constituents or combinations of constituents listed.

(16) "Check samples" means chemical and radiological samples taken subsequent to a routine compliance sample and at the same location to determine if results of the routine sample are valid.

(17) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

(18) "Commercial facility" means a building or other place at which commerce or trade takes place.

(19) "Compliance cycle" means the nine (9) year calendar year cycle during which public water systems shall monitor. Each compliance cycle shall consist of three (3) three (3) year compliance periods. The first calendar year cycle begins January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; and the third begins January 1, 2011 and ends December 31, 2019.

(20) "Compliance period" means a three (3) year calendar year period within a compliance cycle. Each compliance cycle has three (3) three (3) year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; the third from January 1, 1999 to December 31, 2001.

(21) "Comprehensive performance evaluation" or "CPE" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative operation, and maintenance practices.

(22) "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion of the filter, in which bacterial colonies are not discrete.

(23) "Consecutive public water systems" means two (2) or more public water systems with interconnected distribution systems, the effect of which is to distribute water from one (1) system to the next.

(24) "Consumer confidence report" means the annual report prepared by a community water system pursuant to 401 KAR 8:075 that informs consumers of the quality of the water distributed by the system and characterizes the risks of exposure to contaminants found in drinking water.

(25) "Contaminant" means a physical, chemical, biological, or radiological substance or other matter found in water.

(26) "Contaminant group" means all of the constituent members that collectively comprise the individual bacteriological, inorganic chemical, organic chemical, radiological, volatile organic chemical, synthetic organic chemical, and secondary contaminant groups regulated under these administrative regulations.

(27) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(28) "Corrosion" means the dissolution or erosion of pipe or other plumbing material by water.

(29) "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

(30) "Corrosivity" means the tendency of water to form or dissolve calcium carbonate as a film or scale.

(31) "CPE" means a comprehensive performance evaluation.

(32) "Cross connection" means a physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water and the other being either water of unknown or questionable safety, or steam, gas, or chemicals, whereby there may be flow from one (1) system to the other, the direction of flow depending on the pressure differential between the two (2) systems.

(33) "CT" or "CT calc" means the product of "residual disinfectant concentration" (C) in mg/l determined before or at the first customer and the corresponding "disinfectant contact time" (T) in minutes, i.e., C x T. If a public water system applies disinfectants at more than one (1) point prior to the first customer, it shall determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or "total inactivation ratio". In determining the total inactivation ratio, the public water system shall determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before subsequent disinfection application points. "CT 99,9" means the CT value required for 99.9 percent (3-log) inactivation of Giardia lamblia cysts.

\[ \text{CT calc} / \text{CT 99,9} \]

is the inactivation ratio. The sum of the inactivation ratios, or total inactivation ratio shown as

\[ \sum \left( \frac{\text{CT calc}}{\text{CT 99,9}} \right) \]

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one and zero-tenths (1.0) is assumed to provide a 3-log inactivation of Giardia lamblia cysts.

(34) "Customer" means, for the purpose of 401 KAR 8:075, a
billion unit or service connection to which water is delivered by a community water system.

(36) "Department" means the Kentucky Department for Environmental Protection;

(37) "Detected" means, for the purpose of 401 KAR 8:075, at or above the level prescribed by:
   (a) 401 KAR 8:250, Section 1(4), for an inorganic contaminant;
   (b) 401 KAR 8:400, Section 1(18), or 401 KAR 8:420, Section
   (c) 40 CFR 141.25(c) for a radioactive contaminant, as adopted
   without change in Section 2 of this administrative regulation.

(38) "Diatomic earth filtration" means a process resulting in substantial particulate removal in which a precoated cake of diatomaceous earth filter media is deposited on a support membrane, or [(septum)], and while the water is filtered through passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

(39) "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

(40) "Direct responsible charge" means personal, first hand responsibility, control or supervision of the operation of a public water system.

(41) "Disinfectant contact time" (ET in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration (C) is measured. It is also the "T" in CT calculations.

(42) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(43) "Disinfection profile" means a summary of daily Giardia lamblia inactivation through the treatment plant, developed according to the procedure in 401 KAR 8:160, Section 3.

(44) "Distributed water" means water leaving the water treatment facility and entering the distribution system.

(45) "Division" means the Division of Water.

(46) "DOC" means dissolved organic carbon, measured by milligrams per liter, or mg/l.

(47) "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one (1) service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(48) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and the factors that account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements, or [(ICRU)].

(49) "Effective corrosion inhibitor residual", for the purpose of 401 KAR 8:300 only, means a concentration sufficient to form a passivating film on the interior walls of the lead service line or walls of a pipe.

(50) "Enhanced coagulation" means the addition of coagulation sufficient for improved removal of disinfection byproduct precursors by conventional filtration treatment.

(51) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

(52) "Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively. It includes an assessment of filter performance while another filter is being backwashed.

(53) "Filtration" means a process for removing particulate matter from water passing through porous media.

(54) "First draw sample" means a one (1) liter sample of tap water, collected in accordance with 401 KAR 8:300, Section 9(2)(b), that has been standing in plumbing pipes at least six (6) hours and is collected without flushing the tap.

(55) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more settleable particles through gentle mixing by hydraulic or mechanical means.

(56) "Free flowing tap or outlet" means a tap or outlet that when turned on is flowing freely. It does not mean a continuously operating tap.

(57) "GACV" means granular activated carbon filter beds with an empty-bed contact time of ten (10) minutes on average daily flow and a carbon reaction time of every 180 days.

(58) "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(59) "Groundwater source" means a source of water for a public or semipublic water supply that does not have a free water surface exposed to the atmosphere or a turbidity content which exceeds acceptable levels for potable water as specified in 401 KAR 8:010 through 8:700 inclusive, and is not under the direct influence of surface water.

(60) "Groundwater source" means the direct source of surface water means water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, [or] large diameter pathogens such as Giardia lamblia, or Cryptosporidium, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH, which closely correlate to climatological or surface water conditions. Direct influence shall be determined for individual sources in accordance with the cabinet's "Guidance for Determination of Direct Influence under the Direct Influence of Surface Water. September 1992.

(61) "HAA5" means haloacetic acid five (5).

(62) "Haloacetic acid compounds" means monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid.

(63) "Haloacetic acid five (5)" or "HAA5" means the sum of the concentrations, in milligrams per liter, of the haloacetic acid compounds, rounded to two (2) significant digits after addition.

(64) "Initial compliance period" means the first full three (3) year compliance period: January 1993 to December 1995 for systems serving more than 150 service connections. For the contaminants listed at 401 KAR 8:250, Section 12(11) to (15); 401 KAR 8:400, Section 2(19) to (33); and 401 KAR 8:420, Section 2(1)(a) to (u); the initial compliance period shall be January 1996 to December 1998 for systems having fewer than 150 service connections.

(65) "Large water system", for the purpose of 401 KAR 8:300 only, means a water system that serves more than 50,000 persons.

(66) "Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pipe, gooseneck, or other fitting which is connected to the lead line.

(67) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(68) "Manmade beta particle and photon emitters" means all radionuclides emitting beta particles and photons listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 65, except the daughter products of thorium-232, uranium-235 and uranium-238.

(69) "Maximum contaminant level" or "MCL" (mg/l) means:
   (a) the maximum permissible level of a contaminant in water which is delivered to a user of a public water system as measured at points specified in 401 KAR 8:010 through 8:700 inclusive.
(b) For the purpose of 401 KAR 8:075; the highest level of a contaminant that is allowed in drinking water, MCLs are set as close to the MCLGs as feasible using the best available treatment technology. 

(70) “Maximum contaminant level goal” or “MCLG” means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(71) “Maximum residual disinfectant level” or “MRDL” means:

(a) A level of a disinfectant added for water treatment that shall not be exceeded at the consumer’s tap without an unacceptable possibility of adverse health effects; or

(b) For the purpose of 401 KAR 8:075; the highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants; or

(72) “Maximum residual disinfectant level goal” or “MRDLG” means:

(a) The maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants; or

(b) For the purpose of 401 KAR 8:075; the level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefit of the use of disinfectants to control microbial contaminants.

(73) “Maximum total trihalomethane potential” or “MTTP” ([MTFP]) means the maximum concentration of total trihalomethanes or [(TTHMs)] in a given water containing excess free chlorine residuals after seven (7) days retention at a temperature of twenty-five (25) degrees Celsius or [(seventy-seven (77) degrees Fahrenheit, [I]) or above.

(74) “MCL” means maximum contaminant level.

(75) “MCLG” means maximum contaminant level goal.

(76) “Medium-size water system”, for the purpose of 401 KAR 8:300 only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.

(77) “Mineral water” means bottled water that contains no less than 250 parts per million total dissolved solids.

(78) “MRDL” means maximum residual disinfectant level.

(79) “Near the first service connection” means at one (1) of the twenty (20) percent of service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

(80) “NTU” means nephelometric turbidity unit.

(81) “Operator” means a person who has on-site responsibility and authority to conduct the procedures and practices necessary to ensure that the water supply system or a portion thereof is operated in accordance with the laws and administrative regulations of the Commonwealth; or to supervise others in conducting the procedures and practices. Maintenance personnel and others who do not participate directly in the production or distribution of potable water are not included in the term operator.

(82) “Optimal corrosion control treatment”, for the purpose of 401 KAR 8:300 only, means the corrosion control treatment that minimizes the lead and copper concentrations at users’ taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

(83) “Person” means an individual, trust, firm, joint stock company, corporation [[including a government corporation]], partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body.

(84) “Picocurie” or “pc” ([pCi]) means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(85) “Point of disinfectant application” means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

(86) “Point-of-entry treatment device” means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(87) “Point-of-use treatment device” means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one (1) tap.

(88) “Potable water” means water which meets the provisions of 401 KAR 8:010 through 401 KAR 8:700, inclusive, the quality of which is approved by the cabinet for human consumption.

(89) “Private water supply” means a residential water supply located on private property for the use of one (1) to three (3) residential households [residents, and not qualifying as a public or semipublic water system].

(90) “Product water” means the water processed by a bottled water treatment plant that is used for bottled drinking water.

(91) “Professional engineer” means an engineer with current registration as a professional engineer in Kentucky, pursuant to KRS Chapter 222.

(92) “Public water system” means a water system for the provision to the public of water for human consumption through a pipe or other constructed conveyance, if the system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year. The term includes collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, and collection and pretreatment storage facilities not under control of the operator of the water system which are used primarily in connection with the water system.

(a) “Community water system” means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

(b) “Noncommunity water system” means a public water system which serves at least fifteen (15) service connections used by persons for a period less than year-round or which serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year but less than year-round. Noncommunity water systems are either transient or nontransient.

1. “Transient noncommunity water system” means a noncommunity water system that does not regularly serve at least twenty-five (25) of the same persons over three (3) months per year.

2. “Nontransient noncommunity water system” means a system which serves at least twenty-five (25) of the same persons over six (6) months of the year.

(93) “Rem” means the unit of dose equivalent from ionizing radiation to the total body or an internal organ or organ system.

(94) “Repeat compliance period” means any subsequent compliance period after the initial compliance period.

(95) “Residual disinfectant concentration” ([C] in GT calculations) means the concentration of disinfectant measured in mg/L in a representative sample of water. It is the “C” in a GT calculation.

(96) “Sanitary survey” means an on-site review of the water source, facilities, equipment, and operation and maintenance of a public water system for the purpose of evaluating the adequacy of source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

(97) “Secondary contaminants” means contaminants which do not, in general, have a direct impact on the health of consumers but whose presence in excessive quantities may discourage the utilization of drinking water and discredit the supplier.

(98) “Secondary standards” means the maximum contaminant levels for secondary contaminants.

(99) “Secretary” means the secretary for the Natural Resources and Environmental Protection Cabinet.

(100) “Sedimentation” means a process for removal of solids before filtration by gravity or separation.

(101) “Semipublic water system” means a water system made available for drinking or domestic use that which serves more than three (3) families but does not qualify as a private or public water system. Semipublic water systems are commercial facilities which serve food or drink to the public shall meet the requirements of 401 KAR 8:300.

(102) “Service line sample” means a one (1) liter sample of water, collected in accordance with 401 KAR 8:300, Section 9(2)(c), that has been standing for at least six (6) hours in a service line.

(103) “Single family structure”, for the purpose of 401 KAR 8:300 only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.
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(104) "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity, ([generally less than four-tenths (0.4) m/h], [resulting in substantial particulate removal by physical and biological mechanisms.

(105) "Small water system", for the purpose of 401 KAR 8:300 only, means a water system that serves 3,300 persons or fewer.

(106) "Specific analysis" means a laboratory analysis or procedure acceptable to the cabinet for determining the amount of a specific constituent of a type of contaminant regulated under these administrative regulations.


(108) "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(109) "Step 2 requirement" means an alternate or alternative, minimum TOC removal requirement pursuant to 401 KAR 8:510.

(110) "Supplier of water" means a person who owns or operates a public water system.

(111) "Surface water" means water which is open to the atmosphere and subject to surface run-off, or groundwater under the direct influence of surface water.

(112) "Surface water source" includes, but is not limited to, ponds, reservoirs, streams of all sizes, free-flowing springs, wells with variable turbidity due to the characteristics of the raw water, or a source of water supply for a public water system that has a free water surface exposed to the atmosphere, or groundwater under the influence of surface water.

(113) "SUVA" means specific ultraviolet absorption at 254 nanometers, or nm. It is an indicator of the humic content of water, calculated according to the procedures in 40 CFR 141.131, adopted without change in Section 2 of this administrative regulation.

(114) "System" means a public water system.

(115) "System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

(116) "THM" means trihalomethane.

(117) "TOC" means total organic carbon.

(118) "Total organic carbon" or "TOC" means total organic carbon in mg/l measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants, that convert organic carbon to carbon dioxide, rounded to two (2) significant figures.

(119) "Total trihalomethanes (THMs)" or "THMs" means the arithmetic sum of the concentrations in milligrams per liter of the trihalomethanes, or [(THM, 1 compounds, [(trichloromethane, dibromochloromethane, bromodichloromethane, and tribromomethane, 1] rounded to two (2) significant figures.

(120) "Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a forty-seven millimeter (47-mm) diameter membrane filter used for coliform detection.

(121) "Treatment technique" means a required process intended to reduce the level of a contaminant in drinking water.

(122) "Trihalomethane ([THM]) or "THM" means one (1) family of organic halogen compounds resulting from the displacement of three (3) of the four (4) hydrogen atoms in methane with chlorine, bromine, or iodine atoms in the molecular structure.

(123) "Turbitidy" means the presence of suspended particulates, including but not limited to, sand, silt, clay, finely divided inorganic matter, plankton and other microscopic organisms or materials which optically interfere with the clarity of liquids.

(124) "Uncovered finished water storage facility" means a tank, reservoir, or other facility that is open to the atmosphere and is used to store water that will undergo no further treatment except residual disinfection.

(125) "Variance and exemption" means, for the purpose of 401 KAR 8:075, a permission issued by the cabinet pursuant to 401 KAR 8:060 to not meet an MCL or a treatment technique.

(126) "Virus" means a virus of feral origin which is infectious to humans by waterborne transmission.

(127) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment as determined by the cabinet.

(128) "Water distribution system" means the portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of a consumer or a system of piping and ancillary equipment which is owned and operated by an established water system independent of the water supply system from which potable water is purchased.

(129) "Water supply reservoir" and "lake primarily used for drinking water" means, for the purpose of 401 KAR 8:320, Section 2(18), a lake or reservoir so designated by its developer, a public water system drawing raw water from the lake, a local government, and a property owner having an interest in the lake and the watershed upstream of the dam or downstream outlet of the lake.

(130) "Water supply system" means the source of supply and all structures and appurtenances used for the collection, treatment, storage and distribution of water for a public or semipublic water supply.

(131) "Water treatment plant" or "purification plant" means that portion of the water supply system which is designed to alter either the physical, chemical, or bacteriological quality of the water prior to entry to the water distribution system.

Section 2. Federal Regulation Adopted Without Change. (1) 40 CFR 141.52(e) and 141.131, July 2000.

(2) The subject matter of this administrative regulation relating to the definitions of "detected" and "SUVA" is governed by those federal regulations.


(2) This material may be inspected, copied, or obtained, subject to copyright law, at Division of Water, Drinking Water Branch, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation is scheduled for 1:30 p.m. Eastern Time, on December 21, 2000, at the Auditorium, Ground Floor, Capital Plaza Tower, Wilkinson Blvd., Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by December 14, 2000, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing or the scheduled hearing date, if the hearing is cancelled. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410, Fax: (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director

(1) Provide a brief summary of: (a) What this administrative regulation does: This administrative regulation contains the definitions of terms that are used in 401 KAR Chapter 8 and terms for the certification of public water system operators. 401 KAR Chapter 8 provides the administrative regulations for public and semipublic water systems that treat or distribute drinking
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water to their customers.

(b) The necessity of this administrative regulation: KRS 224.10-110 directs the Natural Resources and Environmental Protection Cabinet to develop a program for the regulation and control of the purification of water for public and semipublic use. KRS 223.180 to 223.220 requires the cabinet to develop administrative regulations for the certification of water plant operators. KRS Chapter 13A requires that definitions for terms used in an administrative regulation be contained either in Section 1 of that administrative regulation, or in the first administrative regulation of a chapter. The definitions in this administrative regulation are consistent with those required by the U.S. Environmental Protection Agency (EPA) in 40 CFR Part 141, the National Primary Drinking Water Regulations. The Safe Drinking Water Act, as amended in 1986 and 1996, provides for the primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations," as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility by promulgating this administrative regulation and other administrative regulations in this chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides definitions for the cabinet to implement its program for the regulation and control of the purification of water for public and semipublic water use and for the regulation of the certification of public water system operators pursuant to KRS Chapter 223.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides definitions for terms used in the chapter, so that the cabinet, regulated entities, and the public will understand the terms used in 401 KAR Chapter 8.

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

(a) How the amendment will change this administrative regulation: The amendments to this administrative regulation will add and change many definitions to be consistent with those added or amended by the U.S. EPA in its recent amendments to 40 CFR Part 141. Most of the new or amended definitions include those for the consumer confidence rule, the interim enhanced surface water treatment rule, and the disinfectant/disinfection byproducts rule. The definition of "public water system" is also being amended to add language regarding the conveyance of water "through a pipe or other constructed conveyance." This change will make the definition of "public water system" consistent with that of the federal Safe Drinking Water Act as amended (42 USC 300f, 300g, 300h, 300j). In addition, the definitions of semipublic water systems and private water systems are being amended to clarify the cabinet's intent.

(b) The necessity of the amendment to this administrative regulation: These changes are necessary to allow the cabinet to maintain "pri-macy" for the enforcement and implementation of the federal program. The Safe Drinking Water Act was amended extensively in August 1996, necessitating extensive changes to the federal regulations in 40 CFR Parts 141 and 142. The changes to this administrative regulation are consistent with these changes to the counterpart federal regulations, or the Safe Drinking Water Act, as amended. These changes will also allow the cabinet to maintain its program for the purification of water for public and semipublic use.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments will allow the cabinet to maintain "pri-macy" for the implementation and enforcement of the federal drinking water program, thus allowing the cabinet to maintain its program for the purification of water for public and semipublic use.

(d) How the amendment will assist in the effective administration of the statutes: The amended definitions will be a part of the cabinet's program for the purification of water for public or semipublic use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: While this administrative regulation applies to all public and semipublic water suppliers of drinking water in Kentucky (of which there are currently about 650 public water systems and 90 semipublic water systems, serving more than 3,000,000 Kentuckians), there is no impact as a result of merely defining terms used in the chapter. Any impact would occur in the administrative regulation where the term is used.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. There will be no direct impact as a result of implementing this administrative regulation that adds or amends existing definitions. Any impact would occur in the administrative regulation where the term is used.

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

(a) Initially: There are no initial costs as a result of adding or amending definitions. Any impact would occur in the administrative regulation where the term is used.

(b) On a continuing basis: There are no continuing costs as a result of adding or amending definitions. Any impact would occur in the administrative regulation where the term is used.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations through 401 KAR Chapter 8, including this administrative regulation. In addition, the cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the cabinet's program is no less stringent than the federal program, and the cabinet maintains "primacy" for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Funding will be necessary to implement this administrative regulation on definitions. However, the cabinet has received an increase in funding from the U.S. EPA to implement the new provisions of the Safe Drinking Water Act, as is outlined in other administrative regulations of this chapter.

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

(9) TIERING: Is tiering applied? No, tiering is not applied. Tiering is not applicable: This administrative regulation merely adds or amends terms that are used throughout 401 KAR Chapter 8.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.2.
2. State compliance standards. 401 KAR 8:010, Section 1.
3. Minimum or uniform standards contained in the federal mandate. The federal regulation defines certain terms, and if the same term is used in 401 KAR Chapter 8, that term is defined in this administrative regulation, with the same federal definition.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, if the terms are defined in the federal regulation, then the definitions are effectively the same.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.
2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will indirectly affect public water systems, many of which are owned or controlled by local governments. However, since this administrative regulation only defines terms, there is no direct impact.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to public water systems that provide drinking water to their customers.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the
fiscal impact of the administrative regulation. 

Revenues (+/-): There is no anticipated effect on current revenues since this administrative regulation provides definitions of terms used in 401 KAR Chapter 8. Any impact on revenues would occur in the administrative regulation where the term is used.

Expenditures (+/-): There is no anticipated effect on current expenditures since this administrative regulation provides definitions of terms used in 401 KAR Chapter 8. Any impact on expenditures would occur in the administrative regulation where the term is used.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:020. Public and semipublic water supplies - general provisions.

RELATES TO: KRS 223.160 to 223.220, 224.10-100, 224.10-110, [Gopeners—223—224] 40 CFR 141.3, 141.31, 141.70, 141.72(b), 141.74, 141.75, 142.14, 142.15

STATUTORY AUTHORITY: KRS 223.160 to 223.220, [Gopeners—223—224] 224.10-100, 224.10-110, 40 CFR 141.3, 141.31, 141.70, 141.72(b), 141.74, 141.75, 142.14, 142.15 ([H999]), 42 USC[A] 300l, 300g, 300h, 300i

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce statutes and administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986 and 1996, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this [such] primary enforcement responsibility. The purpose of this administrative regulation is to stipulate general provisions for public and semipublic water supplies to enable the supplies to comply with KRS 224.10-110, as well as the Safe Drinking Water Act, as amended. This administrative regulation is being amended to require a public or semipublic water system to notify the affected local health department if a boil water notice, boil water advisory, or consumer advisory is issued. The cabinet is also incorporating the most recent version of "Recommended Standards for Water Works". There are no comparable federal requirements for these provisions.

Section 1. Applicability. (1) Inclusions. All public and semipublic water systems are subject to the requirements of 401 KAR 8:010 through 8:700, inclusive except those noted in subsection (2) of this section. A semipublic water system which is a commercial facility which uses water from its own premises to prepare food to be served to the public is subject to the requirements of 401 KAR 8:020, 401 KAR 8:150, and 401 KAR 8:200 unless bottled water is used exclusively for food preparation and dish washing, and the facility has demonstrated to the cabinet's satisfaction that no contaminated water may reach the public.

(2) Exclusions. Except as stated above, this chapter shall [does] not apply to water systems in the following two (2) categories:

(a) Water systems which consist only of distribution and storage facilities, which do not have collection or treatment facilities, which obtain all of their water from, but are not owned or operated by, public water systems covered by these administrative regulations, and which do not sell water to any person; or

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

Section 2. Operation, Maintenance, and Safety Requirements. (1) Public and semipublic water systems. A [No] person shall not operate or commence operation of a public or semipublic water system except in compliance with the provisions of 401 KAR 8:010 through 8:700, inclusive. Water supply systems constructed prior to November 11, 1990 may be continued in use, if the operation, maintenance, bacteriological, chemical, physical, and radiological standards comply with 401 KAR 8:010 through 401 KAR 8:700 inclusive, or the system obtains a variance or exemption as set forth in 401 KAR 8:060 from those standards with which they do not comply.

(2) Cross-connections prohibited. All or any connections are prohibited. The use of automatic devices, such as reduced pressure zone back flow preventers and vacuum breakers, may be approved by the cabinet in lieu of proper air gap separation. A combination of air gap separation and automatic devices shall be required if determined by the cabinet to be necessary due to the degree of hazard to public health. Every public water system shall determine if or where cross-connections exist and shall immediately eliminate them if necessary.

(3) Bypasses. A [No] bypass shall not be created or maintained without the prior written approval of the cabinet stating the approved circumstances for establishment of a bypass, its design, and the exact conditions which shall exist for its use.

(4) Auxiliary intaker. An [No] auxiliary intake shall not be used in direct connection with a public or semipublic water system except with prior written approval from the cabinet stating the emergency conditions which necessitate the intake.

(5) Water and sewer connections. The sewer system serving the purification plant and auxiliary facilities, including all plumbing fixtures, toilets, showers, drinking fountains, and floor drains, shall discharge to the sewer system where available. If no such sewer is available, the connection shall be made to an approved sewage disposal facility. There shall be no connections between the sewer system and a filter backwash, filter-to-waste, or clean well overflow lines, unless an approved air gap is provided between these [such] lines and overflow lines and the approved sanitary, storm sewer, or natural drainage system, so as to preclude the possibility of back-up of sewage or waste into the drain or overflow lines.

(6) Proper operation and maintenance. The owner or operator of a public water system shall properly operate and maintain all facilities and systems of treatment and distribution to achieve compliance with the provisions of 401 KAR 8:010 through 8:700 inclusive. Proper operation and maintenance includes effective performance, preventive maintenance, adequate operator staffing and training, adequate representative sample points, and adequate process controls for testing, including appropriate quality assurance procedures.

(7) Reports to the cabinet.

(a) Monthly operating reports. The supplier of water shall file complete, correctly operating, and timely reports with the cabinet. The reports shall be provided in a manner approved by the cabinet and shall be received at the Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, no later than ten (10) days after the end of the month for which the report is filed. Completed reports shall include volume of water treated, type and amount of chemicals added, and test results appropriate to be reported by the plant. Completed reports shall also include the dated original signature of the owner or authorized agent. The supplier of water shall submit the following reports to the cabinet no later than ten (10) days after the end of each month the public water system serves water to the public:

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

(a) The total number of filtered water turbidity measurements taken during the month.

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

(c) The date and value of any turbidity measurements taken during the month which exceed five (5) NTU.

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

(a) For each day, the lowest measurement of residual disinfectant concentration in mg/l in water entering the distribution system.

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

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

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

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

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

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

(v) Number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/ml.

(vi) For the current and previous month the system serves water to the public the value of V in the following formula:

\[ V = \frac{c + d + e}{a + b} \times 100 \]

where

a = the value in subclause (i) of this clause
b = the value in subclause (ii) of this clause
c = the value in subclause (iii) of this clause
d = the value in subclause (iv) of this clause
e = the value in subclause (v) of this clause

(vii) If the cabinet determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions specified by 401 KAR 8:150, Section 3(1)(c), and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (a)(c)(i) through (vii) of this subsection shall [do not apply].

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

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

(b) Reports of failure to comply. Public water systems shall report to the cabinet, within forty-eight (48) hours, by phone or in writing, the failure to comply with any provision of 401 KAR 8:10 through 8:29, inclusive, including the failure to comply with monitoring requirements.

(c) Emergency reports. When a public water system experiences a line break as described in 401 KAR 8:150, Section 4(3), loss of pressure, loss of disinfection, or other event which may result in contamination of the water, the public water system shall immediately report to the cabinet by calling the drinking water branch of the division of water in Frankfort at (502) 564-3410 or the appropriate regional field office of the division of water. If a report is required by paragraph (c) of this subsection and made during [at or after] other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number, (502) 564-2380.

(8) Records to be maintained. All owners or operators of public water and semipublic water systems shall keep on or near the premises the records set forth in this subsection.

(a) Data summaries. Either actual laboratory reports shall be kept or data shall be transferred to tabular summaries. The following information shall be included:
tion stations, connection to emergency or alternative sources, and wholesale customer master meters. The type of piping material in the distribution system and its location shall also be provided. If a public water system, due to age, improper documentation, lost documentation or other valid reason is not able to [comply] comply with this requirement, the system may petition the cabinet to modify this requirement to the extent that compliance is not feasible. The petition for modification shall state specifically what portion of this requirement is not practical and why.

(13) Operation and maintenance manual. Each public water system shall develop and keep on the premises, for operators and employees of the system, an operation and maintenance manual that includes a detailed design of the plant, daily operating procedures, a schedule of testing requirements designating who is responsible for the tests, and safety procedures for operation of the facility, including storage and inventory requirements for materials and supplies used by the facility. The operation and maintenance manual shall be updated as necessary and no less than annually and shall be available by November 16, 1991. Public water systems serving fewer than 100 people or thirty (30) service connections may request that the cabinet waive this requirement. The request shall be in writing and any waiver granted by the cabinet shall be in writing and be retained by the public water system for examination by cabinet personnel.

(14) Flushing recommended. It is recommended that all distribution systems be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines. Flushing should start at the hydrants nearest the source of supply and proceed in an outward direction to the end of each main. Flushing should continue at each hydrant until all traces of turbidity and color are gone. Hydrants should be opened and shut slowly to prevent damage from water hammer. In addition to the regularly scheduled flushing, the following conditions indicate a need to flush the entire system: turbidity within the distribution system greater than five (5) nephelometric turbidity units, or ([NTU]); an inability to maintain required residual of a disinfectant agent in any part of the system; or a heterotrophic plate count, or ([HPC]), in excess of 500. Other indicators that flushing may be called for are taste and odor complaints, color of water, contaminated water samples, or line repairs.

(15) No person shall introduce a substance which may have a deleterious physiological effect, or for which physiological effects may not be known, to the water supply system.

(16) Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR 8010 through 8:700 inclusive, samples shall be analyzed by a laboratory certified by the cabinet as prescribed in 401 KAR 8040, except that measurements for turbidity and disinfectant residuals may be performed by a person approved by the cabinet.

(17) Right of entry. The cabinet may enter an establishment, facility or property of public and semipublic water supplies in order to determine whether the supplies have acted or are acting in compliance with applicable laws or regulations which the cabinet has the authority to enforce. Entry may include collection of water samples for laboratory analyses, inspection of records, files, papers, processes, controls and facilities required to be kept, installed, or used under the provisions of 401 KAR 8010 through 8:700, inclusive. The cabinet or its authorized agents may cause to be tested a feature of a public water system, including its raw water source, to determine compliance with applicable legal requirements.

(18) Recommended practices for water supply reservoirs to be used for drinking water. The following practices are recommended to be employed by water systems which have a lake primarily used as a source of raw drinking water:

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

(b) Prohibition of large motor-driven craft or any craft with toilets.

(c) An area at least 100 feet wide from the upper pool elevation shall be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, barns, etc.

(d) [Ne] Effluent from sewage treatment plants shall not be discharged into the lake.

(e) Picnicking may be permitted around the lake if plans for the development of any picnic area meet regulatory requirements of the cabinet.

(f) A nonpoint source pollution control plan shall be implemented.

(19) Water treatment chemicals and system components. Chemical and other system components, [(such as paints and linings, |) used by a water system shall be acceptable to the cabinet for use in contact with potable water.

(20) Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired or extended distribution systems shall be disposed in a manner which will not violate 401 KAR 5:031.

(21) Water loading stations. Public water systems which provide water loading stations for the purpose of providing water to water hauling trucks or other bulk water devices shall construct the [these] stations to conform to the standards in the Great Lakes Upper Mississippi River Board of State Public Health & Environmental Managers' "Recommended Standards for Water Works," incorporated by reference in Section 5(1) [441] of this administrative regulation.

Section 3. Records and Reports Maintained by the Cabinet. The cabinet shall maintain and report records and reports as governed by 40 CFR 142.14 and 142.15, [as amended by 54 Federal Register 27557, 27557, and 27557 (1989); 56 Federal Register 3505 (1991) and 56 Federal Register 20562 (1991); hereby] adopted without change in Section 4 of this administrative regulation.


(2) The subject matter of this administrative regulation relating to the records and reports required to be maintained by the cabinet shall be governed by those federal regulations.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference [materials are hereby incorporated by reference and are available for public inspection and copying, subject to copyright laws, between 9 a.m. and 4:30 p.m., Monday through Friday, excluding state holidays, at the Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Ky. 40601].


(b) [H] "General Design Criteria for Surface and Ground Water Supplies", 1984, published by the Kentucky Division of Water, Frankfort Office Park, 14 Reilly Rd, Frankfort, Kentucky 40601.

(c) [H] "Guidelines for Conducting Stream Studies for Wastewater Discharges Proposed Within Five Miles Upstream from Public Water Supply Sources or From the Location of Public Water Supply Intakes Within Five Miles Downstream from Wastewater Discharges," 1985, published by the Kentucky Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, Drinking Water Branch, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 9 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation is scheduled for 1:30 p.m., Eastern Time, on December 21, 2000, at the Auditorium, Ground Floor, Capitol Plaza Tower, Wilkinson Blvd., Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by December 14, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not
wishes to be heard at the hearing, you may submit written comments on
the administrative regulation. Send written notification of your intent to
be heard at the hearing, or your written comments on the administra-
tive regulation, to the contact person listed below. Written comments
must be received before adjournment of the hearing or the scheduled
hearing date, if the hearing is cancelled. The hearing facility is acces-
sible to persons with disabilities. Requests for reasonable accommo-
dations, including auxiliary aids and services necessary to participate
in the hearing, may be made to the contact person at least five (5)
workdays prior to the hearing.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water,
14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-
3410, Fax No.: (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative
regulation stipulates general provisions for public and semipublic wa-
ter supplies to enable the supplies to comply with KRS 224.10-110 as
well as the Safe Drinking Water Act, as amended.
(b) The necessity of this administrative regulation: KRS 224.10-
110 directs the Natural Resources and Environmental Protection
Cabinet to develop a program for the regulation and control of the
purification of water for public and semipublic use. KRS 223.160 to
223.220 requires the cabinet to develop administrative regulations for
the certification of water plant operators. The Safe Drinking Water Act,
as amended in 1986 and 1996, provides for the primary enforcement
responsibility by states that have adopted regulations "no less stren-
gent than the national primary drinking water regulations," as well as
meeting other criteria stipulated by the Act. The Commonwealth of
Kentucky has accepted and is currently exercising this primary en-
forcement responsibility by promulgating this administrative regulation
and other administrative regulations in this chapter.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: This administrative regulation provides gen-
eral provisions for public and semipublic water supplies, including
operation, maintenance, and safety requirements, and reporting and
record keeping requirements. These provisions are part of the overall
drinking water program for the regulation and control of the purification
of water for public and semipublic use.
(d) How this administrative regulation currently assists or will assis-
t in the effective administration of the statutes: This administrative
regulation provides general provisions for public and semipublic water
supplies and is a part of the overall drinking water program for the
purification of water for public and semipublic use.
(2) If this is an amendment to an existing administrative regulation,
provide a brief summary of:
(a) How the amendment will change this administrative regulation:
The major amendment to this administrative regulation will require a
public or semipublic water system to notify an affected local health
department if a boil water notice, boil water advisory, or consumer
notice is issued. Another amendment will update the version of
"Recommended Standards for Water Works" (also known as "Ten
States Standards") to the 1997 version.
(b) The necessity of the amendment to this administrative regula-
tion: The Cabinet for Health Services, Division of Public Health Pro-
tection and Safety, requested that the first change be made so that the
local health departments in the affected area will be aware of a boil
water advisory, boil water notice, or consumer advisory so that they
can take any necessary actions. The latest edition of the "Ten States
Standards" will be used for design and specifications since that is the
version that can be purchased, and it has the most recent recommenda-
tions for technical and operational considerations.
(c) How the amendment conforms to the content of the authorizing
statutes: The cabinet will continue to manage its program for the puri-
fication of water for public and semipublic use.
(d) How the amendment will assist in the effective administration of
the statutes: The revised definitions will be a part of the cabinet’s pro-
gram for the purification of water for public or semipublic use.
(3) List the type and number of individuals, businesses, organiza-
tions, or state and local governments affected by this administrative
regulation: This administrative regulation potentially affects all public
and semipublic water suppliers of drinking water in Kentucky, of which
there are currently about 650 public water systems and 90 semipublic
water systems serving more than 3,000,000 Kentuckians. Those sys-
tems would be affected by the first amendment only if a boil water
notice, boil water advisory, or consumer advisory were issued. While
the number of notices and advisories can vary from year to year, ac-
cording to the Division of Water’s database, from August 1999 to
August 2000, approximately 535 notices or advisories were issued by
111 of Kentucky’s 650 public water systems.
(4) Provide an assessment of how the above group or groups will
be impacted by either the implementation of this administrative regula-
tion, if new, or by the change if it is an amendment: If a boil water
notice, boil water advisory, or consumer advisory is issued, then the
public or semipublic water system would need to notify the affected
local health department. Also, all systems would be required to plan
changes using the updated "Ten States Standards" for their water
system design.
(5) Provide an estimate of how much it will cost to implement this
administrative regulation:
(a) Initially: There is no cost as a result of notifying affected local
health departments when a boil water notice, boil water advisory, or
consumer advisory is issued. The newest edition of "Ten States Stan-
dards" costs $8 plus shipping and handling charges.
(b) On a continuing basis: None
(6) What is the source of funding to be used for the implementa-
tion and enforcement of this administrative regulation: Monies allo-
cated by the Kentucky General Assembly in its biennial budget will be
used to implement and enforce this administrative regulations through-
out 401 KAR Chapter 8, including this administrative regulation. In
addition, the cabinet receives grants from the U.S. EPA to implement
the provisions of the federal Safe Drinking Water Act, as amended, if
the cabinet’s program is no less stringent than the federal program,
and the cabinet maintains “primacy” for the enforcement and imple-
mentation of the federal program.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regulation, if
new, or by the change if it is an amendment: No increase in fees or
funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes
any fees or directly or indirectly increases any fees: This administrative
regulation does not establish or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No, tiering is not applied. This
administrative regulation provides the general provisions for public and
semipublic water supplies to use in the operation of the water supply
system, therefore tiering is generally not applicable. However, other
administrative regulations in this chapter are tiered.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
40 CFR 141.3, 141.31, 141.70, 141.72(b), 141.74, 141.75
2. State compliance standards. 401 KAR 8:020.
3. Minimum or uniform standards contained in the federal man-
date. The federal regulations contain standards for coverage; report-
ning, record keeping, and public notification requirements; filtration
and disinfection requirements; requirements for systems that filter; and
analytical and monitoring requirements.
4. Will this administrative regulation impose stricter requirements,
or additional or different responsibilities or requirements than those
required by the federal mandate? The requirements are generally the
same, except that Kentucky extends some provisions to semipublic
water systems, instead of just public water systems. Also, Kentucky
requires all systems to submit monthly operating reports. Also, it is an
additional requirement for a public water system to notify the local
health department if a boil water notice, boil water advisory, or con-
sumer advisory is issued.
5. Justification for the imposition of the stricter standard, or ad-
ditional or different responsibilities or requirements. The additional re-
quirements are necessary for Kentucky to implement and maintain its
program for the purification of public and semipublic water supplies, as
directed by KRS 224.10-110. Also, the Cabinet for Health Services
requested that this amendment be made.
FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect public water systems, many of which are owned or controlled by local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to public water systems that provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): There would be no effect on expenditures as a result of the amendment relating to notifying the affected local health departments of boil water notices, boil water advisories, or consumer advisories. There would be a possible expenditure of $8 plus shipping and handling costs to purchase the revised "Ten States Standards." However, many public water systems will generally purchase that document as a part of their normal operating procedure and keep the document in their library or operator's office, therefore it would not be a true cost of this administrative regulation.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 8:070. Public notification.

RELATES TO: KRS 224.10-100, 224.10-110 [Greater-224], 40 CFR Parts 141, 142, 143.5

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR 141.32 (49CFR), 42 USC §(A) 300l, 300g, 300h, 300i

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1996 and 1996, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising the primary enforcement responsibility. This administrative regulation relates to notification of the public when these administrative regulations have been violated by a public or semipublic water system. The federal regulation does not apply to semipublic water systems, therefore this administrative regulation is more stringent than the federal regulation. A customer of a semipublic water system also needs to be notified of potential health risks if the semipublic water system violates these administrative regulations. This administrative regulation is being amended to incorporate into Kentucky's administrative regulation recent changes to the federal regulation so that Kentucky is able to maintain primacy for the federal program. (This administrative regulation conforms to, and is more stringent than, federal regulations.)

Section 1. Notification for Tier One Violations. The owner or operator of a public or semipublic water system which fails to comply with an applicable maximum contaminant level, or treatment technique, or maximum residual disinfectant level for chlorine dioxide established by 401 KAR 8:010 through 401 KAR 8:700, inclusive, or which fails to comply with the requirements of a schedule prescribed pursuant to a variance or exemption, shall notify the public in accordance with the requirements of this section. These violations are Tier One violations and may be designated by the cabinet as ordinary or acute, with acute violations representing a class of violation which may represent an immediate threat to the public health, requiring consumers to take special precautions.

(1) [Community] Public water systems. The owner or operator of a [community] public water system shall provide notice of a Tier One violation in the following manner:

(a) Newspaper. By publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than fourteen (14) days after the violation or failure has occurred. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area; and

(b) Mail. By mail delivery, [if by direct mail or with the water bill], or by hand delivery, no later than forty-five (45) days after the violation or failure. The cabinet may waive mail or hand delivery if it determines that the owner or operator of the public water system in violation has corrected the violation or failure within the forty-five (45) day period. The cabinet, if it chooses to issue a waiver, shall [will] issue the waiver in writing and within the forty-five (45) day period; and

(c) Acute violation. In addition to the other requirements of this section, for violations of acute Tier One standards the owner or operator of the public water system shall furnish copies of the public notification to radio and television stations serving the area served by the public water system as soon as possible, but in no case later than seventy-two (72) hours after notice of the violation is received by the public water system from the laboratory. The following violations are acute violations:

1. Violations of the maximum contaminant level for total coliforms, if fecal coliforms or E. coli are present in the water distribution system, as provided in 401 KAR 8:230;

2. Violation of the maximum contaminant level for nitrate or nitrite, as provided in 401 KAR 8:230; and

3. Other violations that the cabinet or public water system determines call for special care by the consumer.

(d) Repeat notice. For as long as the violation continues, the owner or operator of the public water system shall give notice at least once every three (3) months by mail delivery, [if by direct mail or with the water bill], or by hand delivery.

(e) Newspaper not available. Community water systems in an area not served by a daily or weekly newspaper of general circulation may satisfy the requirements of this subsection by giving notice, within fourteen (14) days of the violation or failure, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Public notice shall continue for as long as the violation or failure exists. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation or failure exists.

(2) Noncommunity public water systems. The owner or operator of noncommunity water systems may comply with the notice requirements of this section by giving notice within seventy-two (72) hours for acute violations or within fourteen (14) days after other violations or failure by hand delivery or by continuous posting in conspicuous places within the area served by the system. Public notice shall continue for as long as the violation or failure exists. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation or failure exists.

(3) Semipublic. The cabinet may require the owner or operator of semipublic water systems to give notice equivalent to the requirements of noncommunity systems.

Section 2. Notification for Tier Two Violations. The owner or operator of a public or semipublic water system which fails to perform the monitoring required by 401 KAR 8:010 through 8:700, inclusive, fails to make a report required by 401 KAR 8:010 through 8:700, inclusive except for 401 KAR 8:075, fails to comply with a testing procedure established by 401 KAR 8:010 through 8:700, inclusive, is subject to a variance to 401 KAR 8:010 through 8:700, inclusive, granted by the cabinet, is subject to an exemption from 401 KAR 8:010 through 8:700, inclusive, granted by the cabinet, shall notify persons served by the system as prescribed in this section. The violation or receipt of a variance or exemption shall be considered a Tier Two category viola-
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(1) Community systems. The owner or operator of community public water systems shall give notice of Tier Two violations in the following manner:

(a) Newspaper. Notice of Tier Two violations shall be made by the owner or operator of a community public water system, within three (3) months of the violation or granting of a variance or exemption, by publication in a daily newspaper of general circulation in the area served by the system. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area.

(b) Repeat notice. Following the initial notice given under this section, the owner or operator of the public water system shall give notice at least once every three (3) months by mail delivery, [by direct mail or with the water bill] or by hand delivery, for as long as the violation exists. Repeat notice of the existence of a variance or exemption shall be given for as long as the variance or exemption remains in effect.

(c) Notice when newspaper not available. The owner or operator of a community water systems not being served by a daily or weekly newspaper of general circulation may meet the requirements of paragraphs (a) and (b) of this subsection by giving notice, within three (3) months of the violation or granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation exists or a variance or exemption remains in effect. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation exists or a variance or exemption remains in effect.

(2) Noncommunity public water systems. The owner or operator of a noncommunity water system may comply with the notice provisions of this section by giving notice, within three (3) months of the violation or the granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting shall continue for as long as the violation exists or a variance or exemption remains in effect. Notice by hand delivery shall be repeated at least once every three (3) months for as long as the violation exists or a variance or exemption remains in effect.

(3) Semipublic. The owner or operator of a semipublic water systems may be compelled to give the notice required of noncommunity systems when public health considerations require it.

(4) Reduction in notification frequency. The cabinet may reduce notification frequency for minor violations if [when] criteria for the reduction have been approved as a program revision, as stipulated by the U.S. Environmental Protection Agency.

Section 3. New Billing Units. The owner or operator of a community water system shall give a copy of the most recent public notice for any outstanding Tier One violation to all new billing units or new hookups prior to, or when service begins.

Section 4. General Content of Public Notices. Each notice required by this administrative regulation shall provide a clear and readily understandable explanation of the violation, potential adverse health effects, the population at risk, the steps that the public water system is taking to correct the violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected. Each notice shall be concise; shall not contain unduly technical language, unduly small print, or other problems that frustrate the purpose of the notice; and, where appropriate, the notice shall be multilingual. Each notice shall include the name and telephone number of the owner, operator or designee of the public water system as a source of additional information concerning the notice.

Section 5. Proof of Notice. (1) How to submit. Public notices required by this administrative regulation shall be submitted to the cabinet. For newspaper advertisements, a copy of the complete page of the newspaper or newspapers in which the advertisement appeared and the date of its appearance, shall be submitted by the water system. For notices to radio and television media for acute violations, a copy of all material submitted to the radio and television media shall be submitted to the cabinet by the water system, along with an affidavit signaling the operator or owner of the public water system, stating when and to which radio and television media the notice was given. A copy of notices that are hand delivered, delivered to radio or television media for acute violations, or mailed, shall be mailed to the cabinet by the water system, along with an affidavit signed by the operator or owner of the water system stating that all consumers were notified. Mailing to the cabinet shall take place the same day as hand delivery, delivery to radio or television media, or mailing to the public. If the notice is posted, the owner or operator of the water system shall submit a copy of the notice and an affidavit stating where the notices were placed. All notices to the cabinet shall be addressed to the Division of Water, Drinking Water Branch, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601.

(2) Public notification by the cabinet. The cabinet may give the notice to the public required by this section on behalf of the owner or operator of the public water system. However, the owner or operator of the public water system remains legally responsible for ensuring that the requirements are met.

(3) Failure to submit proof of notice. The cabinet may construe failure to submit proof of notice as evidence that the public water system has failed to notify the public. When the public water system fails to submit proof of notice within thirty (30) days of any requirement for notice, the cabinet may submit the notice to be published, with the cost of publication to be billed to the public water system by the publishing entity. Costs incurred by the cabinet to notify the public, resulting from the failure of the public water system to do so, may be recovered by the cabinet.

Section 6. Mandatory Language for Tier One Violations. Public notice for those contaminants listed in this section shall contain language in addition to the information on potential adverse health effects required by Section 4 of this administrative regulation. The owner or operator of a public water system shall include the language specified below for each contaminant listed in those notices. The following mandatory-health effects language shall be published intact and shall [may] not include inserted material not prescribed by this administrative regulation:

- (1) Trichloroethylene. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that trichloroethylene is a health concern at certain levels of exposure. This chemical is a common metal cleaning and dry cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set forth the enforceable drinking water standard for trichloroethylene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

- (2) Carbon tetrachloride. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that carbon tetrachloride is a health concern at certain levels of exposure. This chemical was once a popular household cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for carbon tetrachloride at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.
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damage in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for para-
dichlorobenzene at 0.075 parts per million (ppm) to reduce the risk of the adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(8) 1,1,1-Trichloroethane. The U.S. Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1,1-trichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaner and degreaser of metals. It generally gets into drinking water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the liver, nervous system, and circulatory system. Chemicals which cause adverse effects among exposed industrial workers and in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1,1-trichloroethane at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(9) Fluoride. The U.S. Environmental Protection Agency (EPA) requires that we send you this notice on the level of fluoride in your drinking water. The drinking water in your community has a fluoride concentration of ____________ (Public Water Supply shall insert the compliance result which triggered public notice) milligrams per liter (mg/l). Federal regulations require that fluoride, which occurs naturally in your water supply, not exceed a concentration of 4.0 mg/l in drinking water. This is an enforceable standard called a Maximum Contami-
nant Level (MCL), and it has been established to protect the public health. Exposure to drinking water levels above 4.0 mg/l for many years may result in some cases of crippling skeletal fluorosis, which is a serious bone disorder.

Federal law also requires that we notify you when monitoring indicates that the fluoride in your drinking water exceeds 2.0 mg/l. This is intended to alert families about dental problems that might affect children under nine (9) years of age. The fluoride concentration of your water exceeds this federal standard of 2.0 mg/l.

Fluoride in children’s drinking water at levels of approximately 1.0 mg/l reduces the number of dental cavities. However, some children exposed to levels of fluoride greater than about 2.0 mg/l may develop dental fluorosis. Dental fluorosis, in its moderate and severe forms, is a brown staining and/or pitting of the permanent teeth. Because dental fluorosis occurs only when developing teeth (before they erupt from the gums) are exposed to elevated fluoride levels, households without children are not expected to be affected by this level of fluoride. Families with children under the age of nine (9) are encouraged to seek other sources of drinking water for their children to avoid the possibility of staining and pitting. Your water supplier can lower the concentration of fluoride in your water so that you will still receive the benefits of cavity prevention while the possibility of stained and pitted teeth is minimized. Removal of fluoride may increase your water costs. Treatment for this purpose is also commercially available for home use. Information on such systems is available at the address given below. Low fluoride bottled drinking water that would meet all standards is also commercially available. For further information contact (Public Water Supply shall insert the name, address and telephone number of a contact person) at your water system.

(10) Total coliforms. [(To be used if [when] there is a violation of 401 KAR 9:200, Section 2(1), and not a violation of 401 KAR 9:200, Section 2(2).] The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of total coliforms is a possible health concern. Total coliforms are common in the environment and are generally not harmful themselves. The presence of these bacteria in drinking water, however, generally is a result of a problem with water treatment of the
pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for total coliforms to reduce the risk of these adverse health effects. Under this standard, no more than five and zero-tents (5.0) percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than forty (40) samples/month that have one (1) total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria in drinking water and should be considered safe.

(11) Fecal Coliforms-E. coli, [to be used if [when] there is a violation of 401 KAR 8:200, Section 2(2)](g). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of fecal coliforms or E. coli is a serious health concern. Fecal coliforms and E. coli are generally not harmful themselves, but their presence in drinking water is serious because they usually are associated with sewage or animal wastes. The presence of bacteria in drinking water is generally a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for fecal coliforms and E. coli to reduce the risk of these adverse health effects. Under this standard all drinking water samples must be free of these bacteria. Drinking water which meets this standard is associated with little or none of this risk and should be considered safe. State and local health authorities recommend that consumers take the following precautions: (to be inserted by the public water system according to instructions from state or local authorities).

(12) Microbiological contaminants, [for use if [when] there is a violation of the treatment technique requirements for filtration and disinfection in 401 KAR 8:150 or 401 KAR 8:160]. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants are a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possible jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little or none of this risk and should be considered safe.

(13) Asbestos. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that asbestos fibers greater than ten (10) micrometers in length are a health concern at certain levels of exposure. Asbestos is a naturally occurring mineral. Most asbestos fibers in drinking water are less than ten (10) micrometers in length and occur in drinking water from natural sources and from corroded asbestos-cement pipes in the distribution system. The major uses of asbestos were in the production of cements, floor tiles, paper products, paint, and caulking; in transportation-related applications; and in the production of textiles and plastics. Asbestos was once a popular insulating and fire retardant material. Inhalation studies have shown that various forms of asbestos have produced lung tumors in laboratory animals. The available information on the risk of developing gastrointestinal tract cancer associated with the ingestion of asbestos from drinking water is limited. Ingestion of intermediate-range chrysotile asbestos fibers greater than ten (10) micrometers in length is associated with causing benign tumors in male rats. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for asbestos at seven (7) million long fibers per liter to reduce the potential risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to asbestos.

(14) Barium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that barium is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in some aquifers that serve as sources of ground water. It is also used in oil and gas drilling muds, automotive paints, bricks, tiles and jet fuels. It generally gets into drinking water after dissolving from naturally occurring minerals in the ground. This chemical may damage the heart and cardiovascular system, and is associated with high blood pressure in laboratory animals such as rats exposed to high levels during their lifetimes. In humans, EPA believes that effects from barium on blood pressure should not occur below two (2) parts per million (ppm) in drinking water. EPA has set the drinking water standard for barium at two (2) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to barium.

(15) Cadmium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that cadmium is a health concern at certain levels of exposure. Food and the smoking of tobacco are common sources of general exposure. This inorganic metal is a contaminant in the metals used to galvanize pipe. It generally gets into water by corrosion of galvanized pipes or by improper waste disposal. This chemical has been shown to damage the kidney in animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the kidney. EPA has set the drinking water standard for cadmium at 0.005 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to cadmium.

(16) Chromium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chromium is a health concern at certain levels of exposure. This inorganic metal occurs naturally in the ground and is often used in the electroplating of metals. It generally gets into water from runoff from old mining operations and improper waste disposal from plating operations. This chemical has been shown to damage the kidney, nervous system, and the circulatory and respiratory systems of laboratory animals such as rats and mice when the animals are exposed at high levels. Some humans who were exposed to high levels of this chemical suffered liver and kidney damage, dermatitis and respiratory problems. EPA has set the drinking water standard for chromium at one-tenth (.1) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to chromium.

(17) Mercury. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that mercury is a health concern at certain levels of exposure. This inorganic metal is used in electrical equipment and some water pumps. It usually gets into water as a result of improper waste disposal. This chemical has been shown to damage the kidney of laboratory animals such as rats when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for mercury at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to mercury.

(18) Nitrate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nitrate poses an acute health concern at certain levels of exposure. Nitrate is used in fertilizer and is found in sewage and wastes from human and/or farm animals and generally gets into drinking water from those activities. Excessive levels of nitrate in drinking water have caused serious illness and sometimes death in infants under six months of age.
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age. The serious illness in infants is caused because nitrate is converted to nitrite in the body. Nitrite interferes with the oxygen carrying capacity of the child’s blood. This is an acute disease in that symptoms occur. The purpose of this notice is to encourage parents and other responsible parties to provide infants with an alternate source of drinking water. Local and state health authorities are the best source for information concerning alternate sources of drinking water for infants. EPA has set the drinking water standard at ten (10) parts per million (ppm) for nitrite to protect against the risk of these adverse effects. EPA has also set a drinking water standard for nitrite of one (1) ppm. To allow for the fact that the toxicity of nitrate and nitrite are additive, EPA has also established a non-enforcement standard for the sum of nitrate and nitrite at ten (10) ppm. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to nitrate.

(19) Nitrite. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nitrite poses an acute health concern at certain levels of exposure. This inorganic chemical is used in fertilizers and is found in sewage and wastes from humans and/or farm animals and generally gets into drinking water as a result of these activities. While excessive levels of nitrite in drinking water have not been observed, other sources of nitrite have caused serious illness and sometimes death in infants under six months of age. The serious illness in infants is caused because nitrite interferes with the oxygen carrying capacity of the child’s blood. Nitrite is an acute disease in that symptoms can develop rapidly. However, in most cases, health deterioration occurs over a period of days. Symptoms include shortness of breath and blueness of the skin. Clearly, expert medical advice should be sought immediately if these symptoms occur. The purpose of this notice is to encourage parents and other responsible parties to provide infants with an alternate source of drinking water. Local and state health authorities are the best source for information concerning alternate sources of drinking water for infants. EPA has set the drinking water standard at one part per million (ppm) for nitrite to protect against the risk of these adverse effects. EPA has also set a drinking water standard for nitrate (converted to nitrite in humans) at ten (10) ppm and for the sum of nitrate and nitrite at ten ppm. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to nitrate.

(20) Selenium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that selenium is a health concern at certain high levels of exposure. Selenium is also an essential nutrient at low levels of exposure. This inorganic chemical is found naturally in food and soils and is used in electronics, photocopy operations, the manufacture of glass, chemicals, drugs, and as a fungicide and a feed additive. In humans, exposure to high levels of selenium over a long period of time has resulted in a number of adverse health effects, including a loss of feeling and control in the arms and legs. EPA has set the drinking water standard for selenium at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to selenium.

(21) Acrylamide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that acrylamide is a health concern at certain levels of exposure. Polymers made from acrylamide are sometimes used to treat water supplies to remove particulate contaminants. Acrylamide has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Sufficiently large doses of acrylamide are known to cause neurological injury. EPA has set the drinking water standard for acrylamide using a treatment technique to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. This treatment technique limits the amount of acrylamide in the polymer and the amount of the polymer which may be added to drinking water to remove particulates. Drinking water systems which comply with this treatment technique have little to no risk and are considered safe with respect to acrylamide.

(22) Alachlor. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that alachlor is a health concern at certain levels of exposure. This organic chemical is a widely used pesticide. When soil and climatic conditions are favorable, alachlor may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for alachlor at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to alachlor.

(23) Aldicarb. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb at 0.003 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb.

(24) Aldicarb sulfoxide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb sulfoxide is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulfoxide in ground water is primarily a breakdown product of aldicarb. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb sulfoxide may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb sulfoxide at 0.004 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb sulfoxide.

(25) Aldicarb sulfone. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb sulfone is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulfone is formed from the breakdown of aldicarb and is considered for registration as a pesticide under the name aldoxy carb. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb sulfone may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb sulfone at 0.002 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb sulfone.

(26) Atrazine. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that atrazine is a health concern at certain levels of exposure. This organic chemical is a herbicide. When soil and climatic conditions are favorable, atrazine may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to affect offspring of rats and the heart of dogs. EPA has set the drinking water standard for atrazine at 0.003 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to atrazine.

(27) Carbafuran. The United States Environmental Protection
Agency (EPA) sets drinking water standards and has determined that carboburan is a health concern at certain levels of exposure. This organic chemical is a pesticide. When soil and climatic conditions are favorable, carboburan may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the nervous and reproductive systems of laboratory animals such as rats and mice exposed over long periods of time. Some humans who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the nervous system. Effects on the nervous system are generally rapidly reversible. EPA has set the drinking water standard for carboburan at 0.04 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to carboburan.

(28) Chlordane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlordane is a health concern at certain levels of exposure. This organic chemical is a pesticide used to control termites. Chlordane is not very mobile in soils. It usually gets into drinking water after application near water supply intakes or wells. This chemical has been shown to cause cancer in other animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for chlordane at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to chlordane.

(29) Dibromochloropropane (DBCP). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that DBCP is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, dibromochloropropane may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for DBCP at 0.0002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to DBCP.

(30) o-Dichlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that o-dichlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a solvent in the production of pesticides and dyes. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidney and the blood cells of laboratory animals such as rats and mice exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the liver, nervous system, and circulatory system. EPA has set the drinking water standard for o-dichlorobenzene at six-tenths (0.6) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to o-dichlorobenzene.

(31) cis-1,2-Dichloroethylene. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that cis-1,2-dichloroethylene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and intermediate in chemical production. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for cis-1,2-dichloroethylene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to cis-1,2-dichloroethylene.

(32) trans-1,2-Dichloroethylene. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that trans-1,2-dichloroethylene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and intermediate in chemical production. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for trans-1,2-dichloroethylene at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to trans-1,2-dichloroethylene.

(33) 1,2-Dichloropropane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2-dichloropropane is a health concern at certain levels of exposure. This organic chemical is used as a solvent and pesticide. When soil and climatic conditions are favorable, 1,2-dichloropropane may get into drinking water by runoff into surface water or by leaching into ground water. It may also get into drinking water through improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for 1,2-dichloropropane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 1,2-dichloropropane.

(34) 2,4-D. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that 2,4-D is a health concern at certain levels of exposure. This organic chemical is used as a herbicide and to control algae in reservoirs. When soil and climatic conditions are favorable, 2,4-D may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver and kidney of laboratory animals such as rats exposed at high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for 2,4-D at 0.007 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 2,4-D.

(35) Epichlorohydrin. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that epichlorohydrin is a health concern at certain levels of exposure. Polymers made from epichlorohydrin are sometimes used in the treatment of water supplies as a flocculent to remove particulates. Epichlorohydrin generally gets into drinking water by improper use of these polymers. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for epichlorohydrin using a treatment technique to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. This treatment technique limits the amount of epichlorohydrin in the polymer and the amount of the polymer which may be added to drinking water as a flocculent to remove particulates. Drinking water systems which comply with this treatment technique have little to no risk and are considered safe with respect to epichlorohydrin.

(36) Ethylbenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined ethylbenzene is a health concern at certain levels of exposure. This organic chemical is a major component of gasoline. It generally gets into water by improper waste disposal or leaking gasoline tanks. This
chemical has been shown to damage the kidney, liver, and nervous system of laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for ethylbenzene at seven-tenths (0.7) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to ethylbenzene.

(37) Ethylene dibromide (EDB). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that EDB is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, EDB may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for EDB at 0.00005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to EDB.

(38) Heptachlor. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that heptachlor is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, heptachlor may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standards for heptachlor at 0.0004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to heptachlor.

(39) Heptachlor epoxide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that heptachlor epoxide is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, heptachlor epoxide may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standards for heptachlor epoxide at 0.0002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to heptachlor epoxide.

(40) Lindane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lindane is a health concern at certain levels of exposure. This organic chemical is used as a pesticide. When soil and climatic conditions are favorable, lindane may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver, kidney, nervous system, and immune system of laboratory animals such as rats, mice and dogs exposed at high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system and circulatory system. EPA has established the drinking water standard for lindane at 0.0002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to lindane.

(41) Methoxychlor. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that methoxychlor is a health concern at certain levels of exposure. This organic chemical is used as a pesticide. When soil and climatic conditions are favorable, methoxychlor may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver, kidney, nervous system, and reproductive system of laboratory animals such as rats exposed at high levels during their lifetimes. It has also been shown to produce growth retardation in rats. EPA has set the drinking water standard for methoxychlor at 0.004 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to methoxychlor.

(42) Monochlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that monochlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a solvent. It generally gets into drinking water by improper waste disposal. This chemical has been shown to damage the liver, kidney, and nervous system of laboratory animals such as rats and mice exposed to high levels during their lifetimes. EPA has set the drinking water standard for monochlorobenzene at one-tenth (0.1) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to monochlorobenzene.

(43) Polychlorinated biphenyls (PCBs). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that polychlorinated biphenyls (PCBs) are a health concern at certain levels of exposure. These organic chemicals were once widely used in electrical transformers and other industrial equipment. They generally get into drinking water by improper waste disposal or leaking electrical industrial equipment. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for PCBs at 0.0005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to PCBs.

(44) Pentachlorophenol. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that pentachlorophenol is a health concern at certain levels of exposure. This organic chemical is used as a wood preservative, herbicide, disinfectant, and defoliant. It generally gets into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to produce adverse reproductive effects and to damage the liver and kidneys of laboratory animals. EPA has set the drinking water standard for pentachlorophenol at 0.001 parts per million (ppm) to protect against the risk of cancer or other adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to pentachlorophenol.

(45) Styrene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that styrene is a health concern at certain levels of exposure. This organic chemical is commonly used to make plastics and is sometimes a component of resins used for drinking water treatment. Styrene may get into drinking water from improper waste disposal. This chemical has been shown to damage the liver and nervous system in laboratory animals when exposed at high levels during their lifetimes. EPA has set the drinking water standard for styrene at one-tenth (0.1) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to styrene.

(46) Tetrachloroethene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that tetrachloroethene is a health concern at certain levels of exposure.
exposure. This organic chemical has been a popular solvent, particularly for dry cleaning. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for tetrachloroethylene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to tetrachloroethylene.

(47) Toluene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that toluene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and in the manufacture of gasoline for airplanes. It generally gets into water by improper waste disposal or leaking underground storage tanks. This chemical has been shown to damage the kidney, nervous system, and circulatory system of laboratory animals such as rats and mice exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the liver, kidney and nervous system. EPA has set the drinking water standard for toluene at 1 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to toluene.

(48) Toxaphene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that toxaphene is a health concern at certain levels of exposure. This organic chemical was once a pesticide widely used on cotton, corn, soybeans, pineapples and other crops. When soil and climatic conditions are favorable, toxaphene may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for toxaphene at 0.003 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to toxaphene.

(49) 2,4,5-TP. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 2,4,5-TP is a health concern at certain levels of exposure. This organic chemical is used as a herbicide. When soil and climatic conditions are favorable, 2,4,5-TP may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver and kidney of laboratory animals such as rats and dogs exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the nervous system. EPA has set the drinking water standard for 2,4,5-TP at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 2,4,5-TP.

(50) Xylenes. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that xyylene is a health concern at certain levels of exposure. This organic chemical is used in the manufacture of gasoline for airplanes and as a solvent for pesticides, and as a cleaner and degreaser of metals. It usually gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidney and nervous system of laboratory animals such as rats and dogs exposed to high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for xylene at 10 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to xylene.

(51) Antimony. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that antimony is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in soils, ground water and surface waters and is often used in the flame retardant industry. It is also used in ceramics, glass, batteries, fireworks and explosives. It may get into drinking water through natural weathering of rock, industrial production, municipal waste disposal or manufacturing processes. This chemical has been shown to decrease longevity, and altered blood levels of cholesterol and glucose in laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for antimony at 0.008 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to antimony.

(52) Beryllium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that beryllium is a health concern at certain levels of exposure. This inorganic metal occurs naturally in soils, ground water and surface waters and is often used in electrical equipment and electrical components. It generally gets into water from runoff from mining operations, discharge from processing plants and improper waste disposal. Beryllium compounds have been associated with damage to the bones and lungs and induction of cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. There is limited evidence to suggest that beryllium may pose a cancer risk to humans. Therefore, EPA is performing an ongoing health assessment on noncancer effects with an extra uncertainty factor to account for possible carcinogenicity. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for beryllium at 0.004 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to beryllium.

(53) Cyanide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that cyanide is a health concern at certain levels of exposure. This inorganic chemical is used in electroplating, steel processing, plastics, synthetic fabrics and fertilizer products. It usually gets into water as a result of improper waste disposal. This chemical has been shown to damage the spleen, brain and liver of humans fatally poisoned with cyanide. EPA has set the drinking water standard for cyanide at two-tenths (0.2) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to cyanide.

(54) Nickel. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nickel poses a health concern at certain levels of exposure. This inorganic metal occurs naturally in soils, ground water and surface waters and is often used in electroplating, stainless steel and alloy products. It generally gets into water from mining and refining operations. This chemical has been shown to damage the heart and liver in laboratory animals when the animals are exposed to high levels over their lifetimes. EPA has set the drinking water standard for nickel at one-tenth (0.1) parts per million (ppm) for nickel to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to nickel.

(55) Thallium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that thallium is a health concern at certain high levels of exposure. This inorganic metal is found naturally in soils and is used in electronics, pharmaceuticals, and the manufacture of glass and batteries. This chemical has been shown to damage the kidney, liver, brain and intestines of laboratory animals when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for thallium at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to thallium.

(56) Benzo(a)pyrene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzo(a)pyrene is a health concern at certain levels of exposure. This organic chemical is found in tobacco smoke, fuel and coal fires and is often used as a solvent. It has been shown to cause cancer in laboratory animals such as rats, mice, dogs and chickens exposed to high levels during their lifetimes. EPA has set the drinking water standard for benzo(a)pyrene at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to benzo(a)pyrene.
Agency (EPA) sets drinking water standards and has determined benzo(a)pyrene is a health concern at certain levels of exposure. Cigarette smoke and charbroiled meats are common sources of general exposure. The major source of benzo(a)pyrene in drinking water is the leaching from coal tar lining and sealants in water storage tanks. This chemical has been shown to cause cancer in animals such as rats and mice when the animals are exposed at high levels. EPA has set the drinking water standard for benzo(a)pyrene at 0.002 parts per million (ppm) to protect against the risk of cancer. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to benzo(a)pyrene.

(57) Dalapon. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dalapon is a health concern at certain levels of exposure. This organic chemical is a widely used herbicide. It may get into drinking water by runoff into surface waters. This chemical has been shown to cause damage to the kidney and liver in laboratory animals when the animals are exposed to high levels over their lifetimes. EPA has set the drinking water standard for dalapon at ten parts (0.2) parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dalapon.

(58) Dichloromethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dichloromethane (methylene chloride) is a health concern at certain levels of exposure. This organic chemical is a widely used solvent. It is used in the manufacture of paint remover, as a metal degreaser and as an aerosol propellant. It generally gets into drinking water after improper or accidental release. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dichloromethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dichloromethane.

(59) D(I)-2-ethylhexyl)adipate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that di(2-ethylhexyl)adipate is a health concern at certain levels of exposure. Di(2-ethylhexyl)adipate is a widely used plasticizer in a variety of products, including synthetic rubber, food packaging materials, and adhesives. It may get into drinking water after improper or accidental release. This chemical has been shown to damage the liver and testes in laboratory animals such as rats and mice exposed to high levels. EPA has set the drinking water standard for di(2-ethylhexyl)adipate at 0.4 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)adipate.

(60) Di(2-ethylhexyl)phthalate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that di(2-ethylhexyl)phthalate is a health concern at certain levels of exposure. Di(2-ethylhexyl)phthalate is a widely used plasticizer, which is primarily used in the production of polyvinyl chloride (PVC) resins. It may get into drinking water after improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice exposed to high levels over their lifetimes. EPA has set the drinking water standard for di(2-ethylhexyl)phthalate at 0.006 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)phthalate.

(61) Dinoseb. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dinoseb is a health concern at certain levels of exposure. Dinoseb is a widely used pesticide and generally gets into drinking water after application on orchards, vineyards, and other crops. This chemical has been shown to damage the thyroid and reproductive organs in laboratory animals such as rats exposed to high levels. EPA has set the drinking water standard for dinoseb at 0.007 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dinoseb.

(62) Diquat. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that diquat is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into drinking water by runoff into surface waters. This chemical has been shown to damage the liver, kidney and gastrointestinal tract and causes cataract formation in laboratory animals such as dogs and rats exposed at high levels over their lifetimes. EPA has set the drinking water standard for diquat at 0.02 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to diquat.

(63) Endothall. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that endothall is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into water by runoff into surface water. This chemical has been shown to damage the liver, kidney, gastrointestinal tract and reproductive systems of laboratory animals such as rats and mice exposed at high levels over their lifetimes. EPA has set the drinking water standard for endothall at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endothall.

(64) Endrin. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that endrin is a health concern at certain levels of exposure. This organic chemical is a pesticide no longer registered for use in the United States. However, this chemical is persistent in treated soils and accumulates in sediments and aquatic and terrestrial biota. This chemical has been shown to cause damage to the liver, kidney and heart in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for endrin at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endrin.

(65) Glyphosate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that glyphosate is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into drinking water by runoff into surface waters. This chemical has been shown to cause damage to the liver and kidneys in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for glyphosate at seven-tenths (0.7) parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to glyphosate.

(66) Hexachlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that hexachlorobenzene is a health concern at certain levels of exposure. This organic chemical is produced as an impurity in the manufacture of certain solvents and pesticides. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for hexachlorobenzene at 0.001 parts per million (ppm) to protect against the risk of cancer and other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorobenzene.

(67) Hexachlorocycloptadiene. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that hexachlorocycloptadiene is a health concern at certain levels of exposure. This organic chemical is used as an intermediate in the manufacture of pesticides and flame retardants. It
may get into water by discharge from production facilities. This chemical has been shown to damage the kidney and the stomach of laboratory animals when exposed at high levels over their lifetimes. EPA has set the drinking water standard for hexachlorocyclopentadiene at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorocyclopentadiene.

(68) Oxamyl. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that oxamyl is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for the control of insects and other pests. It may get into drinking water by runoff into surface water or leaching into ground water. This chemical has been shown to damage the kidneys of laboratory animals such as rats when exposed at high levels over their lifetimes. EPA has set the drinking water standard for oxamyl at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to oxamyl.

(69) Picloram. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that picloram is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for broadleaf weed control. It may get into drinking water by runoff into surface water or leaching into groundwater as [residue] a result of pesticide application and improper waste disposal. This chemical has been shown to cause damage to the kidneys and liver in laboratory animals such as rats when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for picloram at 0.5 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to picloram.

(70) Simazine. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that simazine is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control annual grasses and broadleaf weeds. It may leach into ground water or run off into surface water after application. This chemical may cause cancer in laboratory animals such as rats and mice exposed at high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for simazine at 0.004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to simazine.

(71) 1,2,4-Trichlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2,4-trichlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a dye carrier and as a precursor in herbicide manufacture. It generally gets into drinking water by discharges from industrial activities. This chemical has been shown to cause damage to several organs, including the adrenal glands. EPA has set the drinking water standard for 1,2,4-trichlorobenzene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,2,4-trichlorobenzene.

(72) 1,1,2-Trichloroethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1,2-trichloroethane is a health concern at certain levels of exposure. This organic chemical is an intermediate in the production of 1,1-dichloroethylene. It generally gets into water by industrial discharge of wastes. This chemical has been shown to damage the kidney and liver of laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for 1,1,2-trichloroethane at 0.005 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,1,2-trichloroethane.

(73) 2,3,7,8-TCDD (Dioxin). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dioxin is a health concern at certain levels of exposure. This organic chemical is an impurity in the production of some pesticides. It may get into drinking water by industrial discharge of wastes. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dioxin at 0.00000003 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dioxin.

(74) Lead. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain exposure levels. Materials that contain lead have frequently been used in the construction of water supply distribution systems, and plumbing systems in private homes and other buildings. The most commonly found materials include service lines, pipes, brass and bronze fixtures, and solder and fluxes. Lead in these materials can contaminate drinking water as a result of the corrosion that takes place when water comes into contact with those materials. Lead can cause a variety of adverse health effects in humans. At relatively low levels of exposure, these effects may include interference with red blood cell chemistry, delays in normal physical and mental development in babies and young children, slight deficits in the attention span, hearing, and learning abilities of children, and slight increases in the blood pressure of some adults. EPA's national primary drinking water regulation requires all public water systems to optimize corrosion control to minimize lead contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have lead concentrations below 15 parts per billion (ppb) in more than ninety (90) percent of tap water samples (the EPA "action level") have optimized their corrosion control treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove lead in source water is needed. Any water system that consistently exceeds the action level after installation of corrosion control and/or source water treatment must eventually replace all lead service lines contributing in excess of fifteen (15) ppb of lead to drinking water. Any water system that exceeds the action level must also undertake a public education program to inform consumers of ways they can reduce their exposure to potentially high levels of lead in drinking water.

(75) Copper. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that copper is a health concern at certain exposure levels. Copper, a reddish-brown metal, is often used to plumber residential and commercial structures that are connected to water distribution systems. Copper containing drinking water as a corrosion by-product occurs as the result of the corrosion of copper pipes that remain in contact with water for a prolonged period of time. Copper is an essential nutrient, but at high doses it has been shown to cause stomach and intestinal distress, liver and kidney damage, and anemia. Persons with Wilson’s disease may be at a higher risk of health effects due to copper than the general public. EPA's national primary drinking water regulation requires all public water systems to install optimal corrosion control to minimize copper contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have copper concentrations below one and three-tenths (1.3) parts per million (ppm) in more than ninety (90) percent of tap water samples (the EPA "action level") are not required to install or improve their treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove copper in source water is needed.

(76) Chlorine. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlorine is a health concern at certain levels of exposure. Chlorine is added to drinking water as a disinfectant to kill bacteria and other disease-causing microorganisms and is also added to provide continuous disinfection throughout the distribution system. Disinfection is required for surface water systems. However, at high doses for extended periods of time, chlorine has been shown to affect blood and the liver in laboratory animals. EPA has set a drinking water standard
for chlorine to protect against the risk of these adverse effects. Drinking water which meets this EPA standard is associated with little to none of this risk and should be considered safe with respect to chlorine.

(77) Chloramines. The United States Environmental Protection Agency sets drinking water standards and has determined that chloramines are a health concern at certain levels of exposure. Chloramines are added to drinking water as a disinfectant to kill bacteria and other disease-causing microorganisms and are also added to provide continuous disinfection throughout the distribution system. Disinfection is required for surface water systems. However, at high doses for extended periods of time, chloramines have been shown to affect blood and the liver in laboratory animals. EPA has set a drinking water standard for chloramines to protect against the risk of these adverse effects. Drinking water which meets that EPA standard is associated with little to none of these risks and should be considered safe with respect to chloramines.

(78) Chlorine dioxide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlorine dioxide is a health concern at certain levels of exposure. Chlorine dioxide is used in water treatment to kill bacteria and other disease-causing microorganisms and can be used to control tastes and odors. Disinfection is required for surface water systems. However, at high doses, chlorine dioxide-treated drinking water has been shown to affect blood in laboratory animals. Also, high levels of chlorine dioxide given to laboratory animals in drinking water have been shown to cause neurological effects on the developing nervous system. These neurological effects may cause such potentially harmful exposures. EPA requires chlorine dioxide monitoring at the treatment plant, where disinfection occurs, and at representative points in the distribution system serving water users. EPA has set a drinking water standard for chlorine dioxide to protect against the risk of these adverse effects.

(a) A system with a violation at the treatment plant, but not in the distribution system shall also use the following language and shall treat the violation as a noncompliance violation. The following violations reported today are the result of exceedances at the treatment facility only, and do not include violations within the distribution system serving users of this water supply. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to present consumers.

(b) A system with a violation in the distribution system shall also use the following language and shall treat the violation as an actual violation. The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system serving water users. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including pregnant women, infants, and young children, may be especially susceptible to adverse effects of excessive exposure to chlorine dioxide-treated water. The purpose of this notice is to advise that such persons should consider reducing their risk of adverse effects from these chlorine dioxide violations by seeking alternate sources of water for human consumption until such exceedances are rectified. Local and state health authorities are the best sources for information concerning alternate drinking water.

(79) Disinfection byproducts and treatment techniques for DBPs. The United States Environmental Protection Agency (EPA) sets drinking water standards and requires the disinfection of drinking water. However, when used in the treatment of drinking water, disinfectants react with naturally-occurring organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA has determined that a number of DBPs are a health concern at certain levels of exposure. Certain DBPs, including some trihalomethanes (THMs) and some halogenated acids (HAAs), have been shown to cause cancer in laboratory animals. Other DBPs have been shown to affect the liver and the nervous system, and cause reproductive or developmental effects in laboratory animals. Exposure to certain DBPs may produce similar effects in people. EPA has set standards to limit exposure to THMs, HAAs, and other DBPs.

(80) Bromate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that bromate is a health concern at certain levels of exposure. Bromate is formed as a byproduct of ozone disinfection of drinking water. Ozone reacts with naturally occurring bromide in the water to form bromate. Bromate has been shown to produce cancer in rats. EPA has set a drinking water standard to limit exposure to bromate.

(81) Chlorite. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlorite is a health concern at certain levels of exposure. Chlorite is formed from the breakdown of chlorine dioxide, a drinking water disinfectant. Chlorite in drinking water has been shown to affect blood and the developing nervous system. EPA has set a drinking water standard for chlorite to protect against these effects. Drinking water which meets this standard is associated with little to none of these risks and should be considered safe with respect to chlorite.Mui

JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 8 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation is scheduled for 1:30 p.m. Eastern Time, December 21, 2000, at the Auditorium, Ground Floor, Capitol Plaza Tower, Wilkinson Blvd., Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by December 14, 2000, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing or by the scheduled hearing date, if the hearing is cancelled. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) working days prior to the hearing.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410, Fax No.: (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the requirements for public and semipublic systems to notify the public when violations of the administrative regulations of 401 KAR Chapter 8 occur.

(b) The necessity of this administrative regulation: KRS 224.10-110 authorizes the cabinet to develop a program for the purification of public and semipublic water supplies. In addition, the Safe Drinking Water Act, as amended, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations," as well as meeting other criteria stipulated by the Act. As a part of the program authorized by KRS 224.10-110, the cabinet has accepted and is currently exercising the primary enforcement responsibility for the federal regulations. This administrative regulation is necessary, because the U.S. Environmental Protection Agency (EPA) has a corresponding federal regulation in 40 CFR 141.32. For the cabinet to maintain its "primary" for the enforcement and implementation of the federal regulation, the cabinet must adopt a comparable state administrative regulation. Kentucky has therefore promulgated this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by being a part of a comprehensive program for the purification of water for public and semipublic use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Customers of public water systems will be notified when violations of the administrative regulations of 401 KAR Chapter 8 occur, thus enabling them to take

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necesary protective measures, such as boiling water or using bottled water, when violations occur.

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

(a) How the amendment will change this administrative regulation: The amendments will add specific requirements for systems that violate the new standards relating to the enhanced surface water treatment rule, and the disinfectants/disinfection byproducts rule. New mandatory language is added for the specific contaminants that were added in the new federal rule, as well as the other amendments to the federal rule. Mandatory language was added for chlorine, chloramines, chlorine dioxide, disinfection byproducts and treatment techniques for disinfection byproducts, bromate, and chlorite.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary so that Kentucky's regulation will be consistent with the revised federal regulation on public notification. This will allow Kentucky to maintain primacy for the enforcement and implementation of the federal program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment will maintain consistency with the federal regulation, and thus maintain the program for the purification of public and semipublic water systems.

(d) How the amendment will assist in the effective administration of the statutes: Customers will continue to be informed when violations of these administrative regulations occur, and will be able to take any necessary actions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public and semipublic water systems are potentially affected by this administrative regulation, of which there are about 650 systems. Those water systems provide drinking water to more than 3,000,000 Kentuckians. Only those systems that violate the requirements of the other administrative regulations in this chapter relating to the maximum contaminant levels, treatment techniques, and monitoring and reporting requirements are subject to this administrative regulation. Those systems are issued Notices of Violation, and must then provide public notification to their customers pursuant to this administrative regulation.

(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: Public and semipublic water systems that violate the new standards prescribed elsewhere in these administrative regulations will be required to notify their customers when those violations occur. They will be required to use the prescribed language in these amendments.

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

(a) Initially: Only those systems that violate the standards shall notify their customers of the Notice of Violation and the potential health risks. If the system is required to publish the notice in the local newspaper, then costs could range from $50 - $200, depending on the size of the notice, and the circulation of the newspaper. Other systems may be required to just notify their customers by hand delivery; such costs would be minimal.

(b) On a continuing basis: Same as above.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The General Fund monies, as appropriated by the Kentucky General Assembly, will be used by the cabinet, for the implementation and enforcement of this administrative regulation. The U.S. Environmental Protection Agency also issues grants to Kentucky for the enforcement and implementation of the Safe Drinking Water Act, and those funds are made a part of the cabinet's budget, which is approved by the General Assembly.

(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 not be an increase in fees or an increase in funding necessary to implement the amendments to this administrative regulation. Implementation will continue under the existing funding mechanisms appropriated by the Kentucky General Assembly in the General Fund monies.

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

(9) TIERING: Is tiering applied? Yes. Tiering is used in the different levels of violations, a Tier One or Tier Two and acute vs. nonacute violations. There are different notification requirements for Tier One or Tier Two violations and acute vs. nonacute violations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.32.

2. State compliance standards. 401 KAR 8:070.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires a public water system that violates standards or monitoring and reporting requirements report to its customers an explanation of the violation, the potential health effects, and how long the violation can be expected to occur. It also prescribes the mandatory language that the public notifications shall contain.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Yes, this administrative regulation also applies to semipublic water systems.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Customers of semipublic water systems should be afforded the same protections as customers of a public water system. Furthermore, KRS 224.10-110 authorizes the cabinet to prescribe a comprehensive program for the purification of public and semipublic water supplies. This administrative regulation is part of the cabinet's program for public and semipublic water supplies.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation may affect some county or local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation would affect a county or local government that provides water service to its citizens. However, it applies only if the public water system has violations of the standards or monitoring or reporting requirements of the administrative regulations of 401 KAR Chapter 8.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): Expenditures could increase, if the water system has violations of the new standards and monitoring and reporting requirements for the enhanced surface water treatment rule and disinfectants/disinfection byproducts rules. Only those systems that violate the standards shall notify their customers of the Notice of Violation, the potential health risks, and other items required by this regulation. If the system is required to publish the notice in the local newspaper, then costs could range from $50 - $200, depending on the size of the notice and the circulation of the newspaper. Other systems may be required to just notify their customers by hand delivery; such costs would be minimal.

Other Explanation: None
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water (Amendment)

VOLUME 27, NUMBER 6 – DECEMBER 1, 2000

401 KAR 8:150. Disinfection and filtration.

RELATES TO: KRS 224.10-100, 224.10-110, [Chapter 224], 40 CFR Parts 141, 142,141.74 [1995]
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR Parts 141, 142,141.74 [1995], 42 USCA [1300, 3009, 3010]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986 and 1996, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations", as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility. This administrative regulation sets out requirements for the disinfection and filtration of drinking water in public water systems using surface water or groundwater under the direct influence of surface water. These requirements shall serve as treatment techniques in lieu of maximum contaminant levels for the following contaminants: Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, as well as an MCL for turbidity. This administrative regulation requires disinfection of water supplies whose source is groundwater, which is not required under federal regulations. Groundwater disinfection is necessary due to the karstic nature of Kentucky’s geology and to protect against bacteria that could develop in water systems. Disinfection ensures that citizens of the Commonwealth receive quality drinking water. The other states in U.S. Environmental Protection Agency’s southern region, Region IV, also require groundwater disinfection. Federal regulations also do not require filtration of all public water systems using surface water as a source, however these systems shall meet federal drinking water standards. None of Kentucky’s public water systems using surface water as the source could meet the federal standards without filtration. Therefore, this administrative regulation requires filtration on those systems.

Section 1. Disinfection. A [All] public and semipublic water system systems shall provide disinfection, except as provided in this section. 
A semipublic water system [systems] may satisfy this requirement either by complying with the requirements of this section for public water systems or by meeting the requirements of Section 2(5) of this administrative regulation.

A public water system [systems] using groundwater or surface water as a source. A public water system that uses [Supplies which use] chlorine shall use continuous automatic disinfection by chlorination and shall provide a minimum free chlorine residual of two-thirds (0.2) milligrams per liter, [for ppm, [] throughout the distribution system measured as described in subsection (2) of this section. A contact period of at least thirty (30) minutes shall be provided between the chlorine and the water to allow adequate time for disinfection. For a system [those supplies] using chlorine, free chlorine residuals shall be checked daily at representative points throughout the system and shall be reported monthly pursuant to 401 KAR 8:020, Section 2(7)(a). Disinfecting agents other than chlorine, such as chloramines and chlorine dioxide, may be acceptable to the cabinet but shall be specifically approved by the cabinet on a case-by-case basis. If chlorination is used, a minimum combined residual of five-tenths (0.5) milligrams per liter [for ppm, [] shall be provided throughout the distribution system. If chlorine dioxide is used, the concentration of combined residuals (chlorine dioxide, chlorate and chlorine) shall not exceed one and zero-tenths (1.0) milligrams per liter (or ppm) in the water delivered to the distribution system.

2) [All] public water system [systems] using surface water as a source, or groundwater under the direct influence of surface water, shall provide disinfection treatment as follows:

(a) The disinfection treatment shall be sufficient to ensure that the total treatment processes of that system achieve at least ninety-nine and nine-tenths (99.9) percent (3-log) inactivation or removal of Giardia lamblia cysts and at least 99.99 percent (4-log) inactivation or removal of viruses as determined by the cabinet, consistent with the "Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources" incorporated by reference in Section 7 [5] of this administrative regulation.

(b) The residual disinfectant concentration in the water entering the distribution system measured as specified in Section 3(1) of this administrative regulation shall not be less than required by subsection (1) of this section for more than four (4) hours after the system has been put into service.

(c) The residual disinfectant concentration in the distribution system measured as free chlorine, total chlorine, combined chlorine, or chlorine dioxide as specified in Section 3(1) of this administrative regulation shall not be less than two-tenths (0.2) milligrams per liter, [for ppm, [] in more than five (5) percent of the samples each month, for two (2) consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count or [HPC], [as specified in Section 3(1) of this administrative regulation, is deemed to have an adequate disinfectant residual for purposes of determining compliance with this requirement. Thus the value "V" in the following formula shall not exceed five (5) percent in one (1) month for two (2) consecutive months.

\[ V = \frac{c + d + d}{a + b} \times 100 \]

where:

a = number of instances that the residual disinfectant concentration is measured;

b = number of instances that the residual disinfectant concentration is not measured but heterotrophic bacteria plate count, or [HPC, [] is measured;

c = number of instances that the residual disinfectant concentration is measured but does not meet at least two-tenths (0.2) milligrams per liter or ppm or the equivalent and no HPC is measured;

d = number of instances that residual disinfectant concentration is below two-tenths (0.2) milligrams per liter and where the HPC is greater than 500/ml; and

e = number of instances that the residual disinfectant concentration is not measured and HPC is greater than 500/ml.

(d) If the cabinet determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in Section 3(1) of this administrative regulation and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c) of this subsection shall not apply.

(e) The cabinet may, through its own or independent testing, determine that residual disinfection is not present throughout the distribution system, take action necessary to correct the problem and, if necessary, notify the public in accordance with 401 KAR 8:020, Section 2(9).

2) Variances or exemptions shall not be granted for subsection (2) of this section.

Section 2. Filtration. A [All] public water system [systems] using a surface water source and a [all] ground water system [systems], under the direct influence of surface water shall establish a filtration system [systems]. The design for the system [systems] shall be submitted to the cabinet in accordance with 401 KAR 8:100, and shall comply with the following:

1) Conventional filtration treatment or direct filtration:
1) A public water system uses conventional filtration or direct filtration, the turbidity level of representative samples of the system’s filtered water shall be less than or equal to five-tenths (0.5) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1) of this administrative regulation, except that if the cabinet determines that the system is capable of achieving at least ninety-nine and nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts at some turbidity level higher
than five-tenths (0.5) NTU in at least ninety-five (95) percent of the measurements taken each month, the cabinet may substitute this higher turbidity limit for that system. However, the cabinet shall not approve a turbidity limit that allows more than one (1) NTU in more than five (5) percent of the samples taken each month as specified in Section 3(1) of this administrative regulation.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU, measured as specified in Section 3(1) of this administrative regulation.

(c) Beginning January 1, 2002, a system serving at least 10,000 people shall meet the turbidity requirements in 401 KAR 8:160, Section 4(1).

2) Slow sand filtration.

(a) If a public water system uses slow sand filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to one (1) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1) of this administrative regulation, except that if the cabinet determines there is no significant interference with disinfection at a higher turbidity level, the cabinet may substitute this higher turbidity limit for that system.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU, measured as specified in Section 3(1) of this administrative regulation.

3) Diatomaceous earth filtration.

(a) If a public water system uses diatomaceous earth filtration, the turbidity level of representative samples of the system's filtered water shall be less than or equal to one (1) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in Section 3(1) of this administrative regulation.

(b) The turbidity level of representative samples of a system's filtered water shall not exceed five (5) NTU measured as specified in Section 3(1) of this administrative regulation.

4) Other filtration technologies.

(a) A public water system may use a filtration technology not listed in subsections (1) through (3) of this section if it demonstrates to the cabinet that the technology studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of this administrative regulation, consistently achieves ninety-nine and nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts and 99.99 percent removal or inactivation of viruses. If a system makes this demonstration, the requirements of subsection (2) of this section shall apply.

(b) Beginning January 1, 2002, a system serving at least 10,000 people shall meet the requirements for other filtration technologies in 401 KAR 8:160, Section 4(2).

5) A semipublic water system may enter into a protocol with the cabinet whereby the filtration and disinfection requirements of this administrative regulation are achieved using filtration technology, disinfection technology, or a combination of both, if the technology will achieve a ninety-nine and nine-tenths (99.9) percent removal or inactivation of Giardia lamblia cysts and 99.99 percent removal or inactivation of viruses. The protocol shall contain a schedule for maintenance and testing of the filtration and disinfection equipment to assure that the requirements of this subsection are met. Intensive bacteriological testing may be included in the protocol. If surface water is a source of water, filtration shall be an element of the protocol. If groundwater is the only source of water, the semipublic and public water systems eligible under the pilot plant demonstration may enter into a protocol with the cabinet to demonstrate through a regular schedule of bacteriological testing, that filtration or disinfection is not needed. The protocol shall stipulate that any positive bacteriological test shall require disinfection of the water, unless the cabinet has reason to believe that the positive result was due to error.

6) A variance or exemption [Variances or exemptions] shall not be granted for this section.

Section 3. Analytical and Monitoring Requirements. (1) Analytical requirements. Analyses required by this administrative regulation shall be conducted in accordance with the requirements of 40 CFR 141.74, in effect on July 1, 2000, [995; hereby] adopted without change in Section 6 of this administrative regulation.

(2) Monitoring requirements. A public water system that uses a surface water source or a groundwater source under the influence of surface water shall monitor in accordance with paragraph (a) of this subsection beginning July 1, 1992, and with paragraph (b) of this subsection beginning January 1, 1993, or when filtration is installed, whichever is later.

(a) Turbidity measurements shall be performed by public water systems on representative samples of the system's filtered water at least every four (4) hours that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the cabinet. In addition, a system using continuous monitoring shall submit to the cabinet a schedule of times when the monitoring will be recorded. The schedule shall reflect monitoring at least every four (4) hours the system serves water to the public. If a system uses slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the cabinet may reduce the sampling frequency to once per day if it determines in writing, that less frequent monitoring is sufficient to indicate effective filtration performance. If a system serves 500 or fewer persons, the cabinet may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the cabinet determines, in writing, that less frequent monitoring is sufficient to indicate effective filtration performance.

(b) The residual disinfectant concentration of the water entering the distribution system shall be monitored by public water systems continuously, and the lowest value shall be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four (4) hours may be conducted in lieu of continuous monitoring, but for no more than five (5) working days following the failure of the equipment, and systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies each day prescribed below:

<table>
<thead>
<tr>
<th>System Size by Population</th>
<th>Samples/Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 500</td>
<td>1</td>
</tr>
<tr>
<td>501 to 1,000</td>
<td>2</td>
</tr>
<tr>
<td>1,001 to 2,500</td>
<td>3</td>
</tr>
<tr>
<td>2,501 to 3,300</td>
<td>4</td>
</tr>
</tbody>
</table>

The days' samples shall not be taken at the same time. The sampling intervals shall be subject to cabinet review and approval. If the residual disinfectant concentration falls below the requirements of Section 1(1) of this administrative regulation a system using grab sampling in lieu of continuous monitoring, the system shall take a grab sample every four (4) hours until the residual disinfectant concentration meets the requirements of Section 1(1) of this administrative regulation.

(c) The residual disinfectant concentration shall be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 401 KAR 8:200, except that the cabinet may allow a public water system which uses both a surface water source, or a groundwater source under direct influence of surface water, and a groundwater source to take disinfectant residual samples at points other than the total coliform sampling points if the cabinet determines in writing that the points are more representative of treated, or ([disinfected], [i] water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count, or [i]HPC[i] as specified in subsection (1) of this section, may be measured in lieu of residual disinfectant concentration.

(d) If the cabinet determines in writing, based on site-specific considerations, that a system is using means for having a sample transmittance time and temperature conditions specified by subsection (1) of this section and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c) of this subsection shall not apply to that system.

Section 4. Disinfection of New and Repaired Water Lines. (1) Disinfection of water lines. A water distribution system, including storage distribution tanks, repaired portions of existing systems or all extensions to existing systems, shall be thoroughly disinfected before being placed in service. A water distribution system shall disinfected with chlorine or chlorine compounds, in amounts as to produce a concentration of at least fifty (50) ppm and a residual of at least twenty-five (25) ppm at the end of twenty-four (24) hours, and the disinfection
shall be followed by a thorough flushing. A new water distribution line [lines] shall not be placed into service until bacteriological samples taken at the points specified in subsection (2) of this section are examined and are shown to be negative following disinfection. Other methods of disinfection may be used with the written permission of the cabinet.

(2) A water distribution system [systems] shall submit to the cabinet results of bacteriological samples for each new construction project, routine repair, [which includes restoration of pressure to lines where pressure is lost], replacement, or extension to existing systems, after the disinfection and flushing. A core zone, which includes up to the first one-half (1/2) mile, shall be established. Two (2) samples shall be taken from the core zone. Additionally, one (1) sample taken from each mile of new distribution line shall be submitted to the cabinet. A new or routine replacement line shall not be placed in service until negative laboratory results are obtained on the bacteriological analyses. Sample bottles shall be clearly identified as "special" construction tests. Notification of analytical results shall be given to the cabinet by the most expedient method. Other disinfection methods and testing procedures may be used if the cabinet grants prior written approval.

(3) If emergency repairs due to breaks or ruptures in distribution system lines are required, public water systems may suspend bacteriological sampling, if appropriate and thorough flushing safeguards, with a chlorine residual present, are taken. If a public water system suspends bacteriological sampling, it shall maintain records of flushing and chlorine residuals for one (1) year, and conduct bacteriological tests immediately after normal disinfectant residuals are detected after returning the line to service. Records of results shall be submitted to the cabinet and shall be maintained for one (1) year. If the pressure drops [in cases of loss of pressure] below twenty (20) pounds per square inch or a break or rupture occurs [breaks or ruptures] requiring more than eight (8) hours to repair, the public water system shall notify the cabinet immediately pursuant to 401 KAR 8:020, Section 2(7)(c) or according to a schedule approved by the cabinet. These emergency reports are not required for a loss of pressure, break or rupture occurring as a result of service lines serving only one (1) single family residence. Community and nontransient noncommunity public water systems shall maintain a log of all breaks or ruptures which includes the date and location of the break or rupture, the time it was discovered, the population affected, the length of time required to repair the break or rupture, the date and time disinfectant residuals are detected and the date and time bacteriological samples are taken. The log shall be available for inspection by the cabinet.

Section 5. Uncovered Facility. A public or semipublic water system subject to this administrative regulation shall not begin construction of an uncovered finished water storage facility.

Section 6. Federal Regulation Adoption Without Change. 40 CFR 141.74, as in effect on July 1, 2000, is adopted without change. The subject matter of this administrative regulation relating to analytical methods shall be governed by this federal regulation.


(2) This material may be inspected, copied, or obtained, subject to copyright law, at Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The following items are incorporated by reference and are available for public inspection and copying: subject to copyright law, between the hours of 8 a.m. and 4:30 p.m. eastern standard time, Monday through Friday, at the Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:


JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 9 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation is scheduled for 1:30 p.m. Eastern Time, on December 21, 2000, at the Auditorium, Ground Floor, Capital Plaza Tower, Wilkinson Blvd., Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by December 14, 2000, for (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing or the scheduled hearing date, if the hearing is canceled. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410, Fax No.: (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets out requirements for the disinfection and filtration of drinking water in public water systems using surface water or ground-water under the direct influence of surface water.
(b) The necessity of this administrative regulation: KRS 224.10-110 directs the Natural Resources and Environmental Protection Cabinet to develop a program for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended in 1986 and 1996, provides for the primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regulations," as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has adopted and is currently exercising this primary enforcement responsibility by promulgating this administrative regulation and other administrative regulations in this chapter.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides disinfection and filtration requirements as a part of the comprehensive program for the regulation and control of the purification of water for public and semipublic water use. The disinfection and filtration requirements are to protect customers of the water system from bacteria and other organisms that can be harmful when ingested.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure that the water provided by a public or semipublic water system has been properly treated, and is safe for the citizens of the Commonwealth.
funding will be necessary to implement this administrative regulation. However, the cabinet has received an increase in funding from the U.S. EPA to implement the new provisions of the Safe Drinking Water Act, including the provisions of this administrative regulation.

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

(9) TIERING: Is tiering applied? Yes. Tiering is used in various places in this administrative regulation. Different turbidity limits are specified, depending on the type of treatment technique used by the system. Also, some systems with populations of greater than 10,000 will be subjected to a new administrative regulation and will be required to meet a new turbidity limit after 2002, depending on the type of treatment techniques used.

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.70, 141.72, 141.73, 141.75
2. State compliance standards. 401 KAR 8:150.
3. Minimum or uniform standards contained in the federal mandate. The federal regulation prescribes the disinfection and filtration requirements for public water systems.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Yes. The federal regulation does not require systems whose source is ground water ("ground water systems") to disinfect their water, as long as the system meets the maximum contaminant levels and other standards prescribed in the federal regulations. Also, the federal regulation does not require filtration of all public water systems using surface water as a source, as long as they meet the federal drinking water standards.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Since most of Kentucky systems use surface water as the source, and since those systems could not meet the maximum contaminant levels without filtration, Kentucky requires filtration on all systems. Also, due to the karstic nature of Kentucky's geology, bacteria could easily enter into a public water system that uses ground water under the direct influence of surface water as its source. Disinfection of these sources ensures that citizens of the Commonwealth receive water that has been treated from possible contamination from bacteria and microorganisms.

**FISCAL NOTE ON LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect public water systems, many of which are owned or controlled by local governments.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to public water systems that provide drinking water to their customers.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues.
Expenditures (+/-): There is no anticipated effect on current expenditures; the amendments to this administrative regulation require systems to meet a new turbidity requirement after January 1, 2002. Most systems are already meeting the new requirement by making changes in the operating practices or optimizing the control that they already have.
Other Explanation: None
Section 3. Sampling Locations. Samples shall be taken on the following basis:

(1) Raw water. One (1) untreated or raw water sample to determine interference factors.

(2) Normal usage points. Three (3) samples shall be taken from a free-flowing tap at points in the distribution system which reflect normal average daily usage or turnover.

(3) Maximum residence point. One (1) sample shall be taken from a free-flowing tap in the system which reflects the longest time period of retention within the distribution system, but shall not be taken on a dead end.

(4) Time frame. Each quarterly sample shall be taken in the same week and at the same designated sample points during each quarter.

(5) Total samples. The minimum number of samples required for each system shall depend upon the number of treatment plants in the system. Each system shall collect four (4) samples from the distribution system per quarter for each treatment plant. One (1) raw water control sample shall be taken from each plant intake per quarter.

(6) Multiple plant operations. In multiple plant operations, sampling shall reflect the distribution from each plant.

Section 4. Maximum Trihalomethane Limits. The maximum contaminant level for total trihalomethanes, or \( [\text{TTHMs}, \text{shall be} \leq \frac{0.10}{\text{mg/L}} \), which shall be the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane or bromoform, and trichloromethane or chloroform.

(1) How computed. The results of all analyses performed per quarter shall be averaged and reported in a format supplied or approved by the cabinet. All samples collected shall be used in computing the average, unless the analytical results are invalidated by the cabinet.

(2) Running average. Compliance shall be determined by a running average of the four (4) most recent quarterly samples.

Section 5. Reduction in Sampling Frequency. Upon receipt of a written request the requirement for sampling by four (4) samples-per-quarter for each treatment plant used by the system may be reduced by the cabinet to a minimum of one (1) sample for TTHMs per quarter. A reduction in frequency shall only be considered if, after one (1) full year of monitoring in accordance with the original schedule, it has been demonstrated that the water delivered to consumers is below the TTHM MCL of 0.10 mg/L. The minimum single sample for TTHMs shall then be taken at a point in the distribution system that reflects maximum residence time. If a minimum single sample per quarter exceeds the MCL for TTHMs, and is confirmed by at least one (1) check sample, the system shall comply with the four (4) samples-per-quarter sampling frequency for one (1) year before reduced frequency may again be requested. Significant changes in the water source or treatment program may be grounds for requiring four (4) samples per quarter.

Section 6. Increase in Sampling Frequency. If analytical results from quarterly sampling show a TTHM arithmetic sum above acceptable limits, the cabinet may place the system on a monthly monitoring schedule until acceptable levels are achieved for three (3) consecutive months.

Section 7. Sampling and Analytical Methods. (1) Approved methods. Sampling and analyses conducted pursuant to this administrative regulation shall be conducted in accordance with 40 CFR 141.24(e) and 141.30(e), in effect on July 1, 1995, [1995; hereby adopted without change in Section 12 of this administrative regulation.

(2) Certified laboratories. The cabinet will only accept analytical data for TTHM monitoring and analysis, from a laboratory that has [laboratories which have] participated in the U.S. Environmental Protection Agency performance evaluation program and that has [which have] been certified by the cabinet pursuant to 401 KAR 8.040 or the Environmental Protection Agency.

Section 8. Total Trihalomethane Levels Exceeded. If the average annual TTHM level is exceeded, the community water system shall
notify the public pursuant to 401 KAR 8:070.

Section 9. Requirements for Making Significant Treatment Modifications. Before a system makes a [any] significant modification in its existing treatment process [in order] to achieve compliance with this administrative regulation, the system shall obtain written cabinet approval of a detailed plan for the modification. A plan to modify a disinfection practice shall require the system, at a minimum, to:

1. Evaluate the water system for sanitary defects and evaluate the source water for bacteriological quality;
2. Evaluate its existing treatment practices, consider improvements that minimize disinfectant demand and optimize finished water quality throughout the distribution system;
3. Provide baseline data from water quality surveys of the distribution system. The data shall include the monitoring results for:
   a. Total coliform and fecal coliform bacteria;
   b. Fecal streptococci;
   c. Standard plate counts at thirty-five (35) degrees Celsius and twenty (20) degrees Celsius;
   d. Phosphate;
   e. Ammonia nitrogen; and
   f. Total organic carbon;
4. Provide additional similar monitoring to assure continued maintenance of optimal bacteriological quality in finished water after unit treatment or disinfection modifications;
5. Demonstrate an active disinfectant residual throughout the distribution system during and after the modification; and
6. Provide additional monitoring for chlorate, chloride, and chlorite dioxides if chlorine dioxide is used as a disinfectant.

Section 10. Self-monitoring Reporting Requirements. Each laboratory performing monitoring and TTHM analyses for drinking water systems shall hold a valid certification pursuant to 401 KAR 8:040. Public water systems shall submit results to the cabinet, within ten (10) days following the end of the compliance period for which the analysis was completed.

Section 11. Variance Procedures for Total Trihalomethanes. (1) When considered. Applications for a variance from the maximum acceptable contaminant level, or [(MCL,)] of 0.1 mg/l shall [will] be considered by the cabinet if the public water system making application presents evidence that:

(a) The best treatment technology, treatment techniques or other means generally available for achieving compliance with the MCL are not available;
(b) The best treatment method is not technically appropriate or technically feasible for that system; and
(c) Only marginal reduction in TTHM levels would be realized if the treatment methods specified in subsection (2) of this section were utilized.

(2) Best technology. The following technology, treatment techniques, or other generally available means for achieving compliance with the MCL for total trihalomethanes are considered the best available:

(a) The use of chlorine dioxide as an alternate or supplemental disinfectant or oxidant;
(b) The use of chlorine dioxide as an alternate or supplemental disinfectant or oxidant;
(c) Improved clarification for THM precursor reduction;
(d) Moving the point of chlorination to reduce TTHM formation and, if necessary, substituting chloramines, chlorine dioxide, or potassium permanganate for the use of chlorine as a preoxidant; and
(e) The use of powdered activated carbon for THM precursor or TTHM reduction seasonally or intermittently, at dosages not to exceed ten (10) mg/l on an annual average basis.

(3) When cabinet will grant variance. The cabinet, upon making a finding that information submitted by the applicant system supports a decision that best treatment technology or techniques are not available and effective, will consider a variance under the following conditions:

(a) Granting the variance will not result in an unreasonable risk to health; and
(b) The public water system proposes a compliance schedule, within one (1) year of the date the variance is granted, which examines the technological, economic, and reduction feasibility of one (1) or more of the following treatment methods:
   1. Introduction of off-line water storage for THM precursor reduction;
   2. Aeration for TTHM reduction, where geographically and environmentally appropriate;
   3. Introduction of clarification where not currently practiced;
   4. Consideration of alternate sources of raw water; and
   5. Use of ozone as an alternate or supplemental disinfectant or oxidant.

(c) The public water system implements quality control measures the cabinet may require during the period ending on the date it complies with this administrative regulation.

(d) If the cabinet determines that a treatment method identified in paragraph (b) of this subsection is technically feasible, economically reasonable, and will achieve TTHM reductions commensurate with the costs incurred with the installation and use of the treatment method, the cabinet shall require the system to install and use that treatment method in connection with a compliance schedule. The cabinet's decision shall be based upon studies performed by the system and other information submitted to the cabinet by the system in accordance with 401 KAR 8:060.

(4) The cabinet shall not require a system to install or use a treatment method not described in this section to obtain or maintain a variance from the TTHM regulation or in connection with any variance compliance schedule.

Section 12. Federal Regulations Adopted Without Change. 40 CFR 141.24(e) and 141.30(e), as in effect on July 1, 2000, are adopted without change. The provisions of this administrative regulation relating to analyses and monitoring requirements for total trihalomethanes shall be governed by the federal regulations.

JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 9 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation is scheduled for 1:30 p.m. Eastern Time, on December 21, 2000, at the Auditorium, Ground Floor, Capital Plaza Tower, Wilkinson Blvd., Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by December 14, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing or the scheduled hearing date, if the hearing is canceled. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410, Fax No.: (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director

(a) Provide a brief summary of:
   1. Why this administrative regulation does: This administrative regulation establishes requirements for byproducts of disinfectants used to purify drinking water. These byproducts may, when consumed over time, cause adverse health effects. This administrative regulation stipulates which systems shall test for the byproducts and what actions are to be taken when they are found.
   2. The necessity of this administrative regulation: KRS 224.10-
110 directs the Natural Resources and Environmental Protection Cabinet to develop a program for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended in 1986 and 1996, provides for the primary enforcement responsibility by states to adopt regulations "no less stringent than the national primary drinking water regulations," as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility by promulgating the administrative regulations in this chapter. In December 1998, the national primary drinking water regulations were amended to add new requirements for disinfectant residuals, disinfection byproducts, and disinfection byproducts precursors in 40 CFR 141.130 to 141.135. The new requirements also "phased out" portions of the old federal regulation, 40 CFR 141.30. To maintain Kentucky's "primacy," the cabinet is required to promulgate this administrative regulation that also phases out the provisions of the old disinfection byproducts regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation promulgates into Kentucky's administrative regulations the provisions of the federal regulation, thus maintaining Kentucky's program for the purification of water for public and semipublic use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the requirements for larger public water systems that disinfect their water, thus maintaining its program for the purification of water for public and semipublic use.

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

(a) How the amendment will change this administrative regulation: The amendments to this administrative regulation specify for community water systems that serve a population of greater than 10,000 and that use as their source surface water or ground water under the direct influence of surface water, the administration regulation will apply only until December 31, 2001. After that date, the provisions of 401 KAR 8:510 shall apply. Similarly, for a community water system that serves a population of greater than 10,000 and that uses as its source surface water or ground water not under the direct influence of surface water, this administrative regulation shall apply until December 31, 2003. After that date, the provisions of 401 KAR 8:510 shall apply.

(b) The necessity of the amendment to this administrative regulation: The federal regulations were amended in December 1998, therefore to maintain "primacy," the cabinet is required to amend its regulations accordingly.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments will be a part of the cabinet's program for the purification of water for public and semipublic use.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will provide for purification of water for public use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all public water systems that serve a population of more than 10,000. There are about 100 such systems in Kentucky, some of which are controlled or owned by local governments. Those public water systems provide drinking water to citizens of the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendments will "phase out" the applicability of this administrative regulation to specific systems, depending on their source of water. As a system is removed from the applicability of this administrative regulation, the system will be subject to the new additional requirements in 401 KAR 8:510. Any impact to the system would be a result of the new administrative regulation.

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

(a) Initially: There are no initial costs associated with the phasing out of this administrative regulation. Any costs incurred would be as a result of a public water system being subject to the new federal regulation.

(b) On a continuing basis: There are no continuing costs associated with the phasing-out of this administrative regulation. Any costs incurred would be a result of a public water system being subject to the new federal regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation. In addition, the cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the cabinet's program is no less stringent than the federal program, and the Cabinet maintains "primacy" for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement only this administrative regulation. However, the cabinet has received an increase in funding from the U.S. EPA to implement the new provisions of the Safe Drinking Water Act, as is outlined in other administrative regulations of this chapter.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees, although a public water system may elect to raise the rates it charges its customers for providing water.

(9) TIERING: Is tiering applied? Yes. This administrative regulation applies only to those systems that serve a population of greater than 10,000. The amendments will be phased in, depending on the source of the system's water: systems using surface water or ground water under the direct influence of surface water are subject to this administrative regulation until December 31, 2001; systems using ground water not under the direct influence of surface water are subject to this administrative regulation until December 31, 2003.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.12, 141.30.

2. State compliance standards. 401 KAR 8:500.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation contains the maximum contaminant level for total trihalomethanes for public water systems that serve a population of greater than 10,000. The MCL applies until December 31, 2001 for a system that uses as its source surface water or ground water under the direct influence of surface water, and until December 31, 2003 for a system that uses as its source ground water not under the direct influence of surface water.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State what unit, part or division of local government this administrative regulation will affect: This administrative regulation will affect some public water systems, many of which are owned or controlled by local governments.

3. State the aspect or service of local government to which this administrative regulation relates: This administrative regulation relates to those affected public water systems that provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/⁻): There is no anticipated effect on current reve-
JUSTICE CABINET
Department of Corrections
Division of Local Facilities
(Amendment)


RELATES TO: KRS 67A.028, 67B.020(1), 441.045, 441.055, Ky.
Constitution Sections 99, 152
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation establishes definitions for 501 KAR Chapter 3, regulating full-service jail facilities.

Section 1. Definitions. (1) "Ceiling" means the overhead area in the multipurpose room which is below the secure deck.

(2) "Dayroom" means a secure area with controlled access from the inmate living area, to which inmates may be admitted for daytime activities including dining, bathing, and selected recreation or exercise.

(3) "Deck" means the secure overhead area of the jail which is part of the security perimeter.

(4) "Department" is defined in KRS 441.055(5).

(5) "Detoxification area" means an area used to hold one (1) or more chemically impaired persons temporarily during the detoxification process until they can care for themselves.

(6) "Dormitory" means an area equipped for housing not less than three (3) or more than thirty-six (36) persons.

(7) "Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, or discharge, or until they can be moved to a general housing area.

(8) "Jail" is defined in KRS 441.055(1).

(9) "Jailer" means:
(a) The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the jail;
(b) A department as defined in KRS 67B.020(1); or
(c) A correctional services division as created by KRS 67A.028.

(10) "Jail personnel" is defined in KRS 441.055(6).

(11) "Medical authority" means the person or persons licensed and certified to provide medical care to inmates in the jail.

(12) "Pat or frisk" means a manual search of a clothed person and includes a visual inspection of the open mouth.

(13) "Penal type" means furnishings, fixtures, and equipment approved by the department.

(14) "Prisoner" is defined in KRS 441.055(3).

(15) "Prisoner living area" means a group of rooms or cells that provide housing for the prisoner population.

(16) "Probing of body cavities" means a manual or instrument search of a person's oral, anal, vaginal, or other body cavity, performed by medical personnel.

(17) "Safety vestibule" means a defined space that promotes security by the use of two (2) or more doors used to contain and observe those who pass.

(18) "Sally port" means a vehicular drive-in. It is generally made secure by electrically or manually operated doors for entrance and exit, located in close proximity to the jail intake area.

(19) "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(20) "Strip search" means a body search during which a person is required to open or remove clothing, during which a person is subject to visual inspection of the torso, female breast, genital area, anal area, as well as other body cavities.

DOUG SAPP, Commissioner
APPROVED BY AGENCY: November 13, 2000
FILED WITH LRC: November 15, 2000 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by December 14, 2000, five 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. 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: Tamela Biggs or Jack Darnell, Staff Attorneys, Kentucky Department of Corrections, 2439 Lawrenceburg Road, P. O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tamela Biggs, Staff Attorney

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes definitions for 501 KAR Chapter 3 regulating full-service jail facilities.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Complies with KRS Chapter 13A and removes the requirement for the type of doors a sally port shall have from the chapter which sets forth the requirements for the physical plant portion of the jail.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to employees and the inmate population.

(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 complies with KRS Chapter 13A and removes the requirement for the type of doors a sally port shall have from the chapter which sets forth the requirements for the physical plant portion of the jail.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of jails.

(d) How the amendment will assist in the effective administration of the statutes: This regulation provides a clear and concise direction which shall help jails to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 18 jails which house 1650 full-service prisoners.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To provide a clear and concise direction to help jails to operate more efficiently.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 1998-2000 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation,
if new, or by the change if it is an amendment: None

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

(9) TIERRING: Is tiering applied? No. Tiering was not appropriate in the administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. County jails.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to local jail correctional systems.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Expenditures (+/-): 0

Other Explanation: None

JUSTICE CABINET
Department of Corrections
Division of Local Facilities
(Amendment)


RELATES TO: KRS 441.045, 441.055, 441.064, 441.075
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which will house state prisoners. This administrative regulation establishes [sets forth] standards and procedures to be followed in the design and construction of jails.

Section 1. Purpose. The purpose of this administrative regulation is to provide minimum standards for the renovation and/or construction of jail facilities and for measuring compliance of existing jails in accordance with KRS 441.055, 441.064, and 441.072; and Kentucky Construction/Remodeling Standards.

Section 2. Consultation. The department of Corrections shall provide to a [for any] county government seeking [which wishes] to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails. The consultant shall meet with the appropriate officials of that county and advise them concerning:

(1) Site selection; []
(2) Probable need as it relates to capacity and type of prisoners [inmates] to be housed; []
(3) Sources of financing for constructing; []
(4) Laws and administrative regulations relating to treatment of prisoners [inmates];
(5) Laws and administrative regulations relating to facilities for prisoners [inmates];
(6) Sources of revenue for operation of the jail; []
(7) Probable cost for operation of the jail; and []
(8) Potential for sharing (shared) facilities with adjoining counties.

Section 3. Site Acceptance. A [new] jail shall not be built without site acceptance by the department [of Corrections]. The following criteria shall be considered in site selection:

(1) Size; [ ]
(2) Proximity to court; [ ]
(3) Proximity to community resources; [ ]
(4) Availability of public transportation; [ ]
(5) Environmental health; [ ]
(6) Adequate parking; and [ ]
(7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any jail, plans and specifications shall be submitted to the department [of Corrections] for review and approval. Plans and specifications for jail renovation or construction shall contain the following criteria and documentation:

(1) For major renovation or new construction, a programming phase, to include [containing all]:
   (a) Evaluation of existing facility;
   (b) Population analysis;
   (c) Space requirements based on population analysis and standards for the facility and site outlined in this administrative regulation [the Kentucky Minimum Standards for Local Jails];
   (d) Staffing analysis;
   (e) Cost analysis to include construction and operation costs;
   (f) Financing alternatives, if applicable;
   (g) Design-construction time schedule; and
   (h) Summary and recommendations; and
   (i) Information concerning the programming phase shall only be submitted:
      1. On major renovation or new construction; and
      2. For information review purposes.
(2) A schematic phase containing:
   (a) A scale drawing [scale drawings] of each floor plan with [all] proposed rooms and areas one-eighth (1/8) inch minimum;
   (b) A scale drawing [scale drawings] of the site, locating the building, parking, and other facilities one (1) inch equals fifty (50) feet;
   (c) Documentation of site as to:
      1. Size;
      2. Proximity to court [courts];
      3. Proximity to community resources;
      4. Availability of public transportation;
      5. Environmental health
      6. Adequate parking; and
   (d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;
   (e) Scale elevation drawings [drawings] of [all] exterior walls;
   (f) Schematic cost estimate to include revised construction and operation costs; and
   (g) A revised design-construction time schedule.
(3) A design development phase containing:
   (a) A scale drawing [scale drawings] on each floor plan with [all] proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;
   (b) All necessary construction drawings including construction details;
   (c) Specifications for [all] materials and workmanship;
   (d) A proposed contract with general and special conditions;
   (e) Engineering calculations for the foundations, structure, heating, ventilating, air conditioning, lighting and plumbing; and
   (f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.
(4) Construction document phase.
   (a) Revised design development construction drawings following review by all applicable agencies signed by an architect registered in the Commonwealth of Kentucky and revised if necessary to include changes required by the department and [of Corrections];
   (b) Revised design development specifications of material and workmanship following review by all applicable agencies.
(5) A contract administration phase containing:
   (a) Signed copies of the [all] contracts for construction, financing and bonding;
(b) Signed copies of the [all] construction permits; and
(c) Documentation of required review by [all] other applicable state agencies,
(4) Every [and]
(d) All change order [orders] shall be submitted to the department
[of Corrections] for review and approval.

Section 5. Approval of Renovation, Construction Plans and Speci-
fications. (1) Construction shall not begin until the construction docu-
ment phase has been approved. The department [of Corrections]
shall:
(a) Review each submission [all submissions] within thirty (30)
days of receipt;
(b) [and]
1. Approval;
2. Acceptance with required changes; or
3. Rejection, with reasons stated. [No construction shall be started
until the construction document phase as required in Section 4(4) of
this administrative regulation has been approved.]
(2) Depending on the site of the proposed constructions, renova-
tion or addition the department [of Corrections] may combine two (2)
or more phases, as outlined in Section 3 of this administrative regula-
tion, above for review and approval.
(3) A change to the plan [All changes prior to the approval of final
construction documents] shall require [appropriate modifications to the
final-construction-documents-including] redrawing unless specifically
exempted by the department. Specifications shall be rewritten to
reflect a change, [of plans andrewriting of specifications. All changes
after the approval of final-construction documents shall require ade-
quately documentation which fully describes and illustrates the changes
which may include written or graphic addenda, field orders and
change orders, in addition a set of accurate as built drawings shall be
submitted to the Department of Corrections within sixty (60) days of
occupancy of the facility.

Section 6. Waiver of Compliance. (1) The department [of Corrections]
may grant a waiver of the implementation of the physical plant
standards for an existing jail if the department determines:
(a) That strict compliance shall [will] cause unreasonable difficul-
ties;
(b) That a waiver shall [will] not seriously affect the security, su-
 pervision of prisoners, programs, or the safe, healthful, or efficient
operation of the jail;
(c) That compliance shall [is to] be achieved in a manner other than
that which is specified, but in a manner which is sufficient to
meet the intent of this administrative regulation [these standards].
(2) When a waiver from a standard is desired, the responsible
local authority shall submit a written request to the department [of
Corrections]. The written request shall include the following informa-
tion:
(a) Citation of the specific standard involved;
(b) Identification and description of the specific difficulties involved
in meeting strict compliance;
(c) Description of the alternative proposed; and
(d) Provision of sufficient documentation which shall [will] demonstrate
that the waiver, if granted, shall [will] not jeopardize the security,
supervision of prisoners [inmates], programs, or the safe, healthful, or
efficient operation of the jail.
(3) A waiver, if granted by the department [of Corrections], shall
apply only to the petitioner for the specific situation cited and for the
period of time specified and shall include any requirements imposed
by the department as conditions upon the waiver. A [No] waiver shall
not be granted for longer than twelve (12) months. A [Any] waiver
granted for a twelve (12) month period shall be reviewed for reap-
proval at the end of the period [for reapproval].

Section 7. Facility Design. (1) Each jail shall have two (2) separate
entrances: a prisoner entrance and a service entrance. The depart-
ment may permit these entrances to be combined. [Depending upon
its size and intended use; every jail shall include within its walls the
following facilities and equipment:]
(a) Prisoner entry. The purpose of this entrance shall be to provide
secure and controlled access to the jail for prisoners.
(b) Entrances. Every jail shall have three (3) separate and distinct
entrances: a public entrance, an adult-inmate entrance, and a service
entrance. The Department of Corrections may permit these entrances
to be combined:
1. Public entrance. The purpose of this entrance shall be to divert
the general public from the security area of the jail and from contact
with incoming inmates. This area shall be the location for the general
public to conduct their business at the jail. The following design fea-
tures shall be incorporated:
   a. Provide a clear view of this from the control room by means of
direct surveillance or closed circuit T.V.
   b. Meet the requirements for handicapped persons:
2. Service entrance. The purpose of this entrance shall be to provide
access to service vehicles and delivery trucks with minimum
security risks. It [may contain a loading dock area] shall be located in
close proximity to storage rooms and the kitchen area.
3. Adult inmate entrance. The purpose of this entrance shall be to
provide secure and private access to the jail for incoming inmates.
This entrance shall be serviced by a drive-in sallyport or a secure
walk-in vestibule and shall incorporate the following design features:
   a. Be located adjacent to the booking area;
   b. Be monitored from the control room;
   c. Be free of steps or other obstacles;
   d. Be protected from inclement weather:
      e. Have a security penal type pistol-locker in sallyport or vestibule;
      f. All hardware and equipment shall be of approved penal type;
3. Each exit in the security area shall be secured. (b) Exits. All
openings in the security perimeter shall be secured with penal de-
vices. Fire exits, when possible, shall open into controlled, secured
courts and exercise areas.
(c) Administrative areas. Administrative areas shall provide space
outside the secured area of the jail for the housing of administrative
offices and to accommodate the public. Administrative areas shall
contain the following additional areas:
   A. A waiting area which shall provide:
      a. Space for the general public;
      b. Protection from inclement weather;
   2. The waiting area shall have toilet facilities and drinking foun-
tains in new jails;
   2. A visiting area; public sides which shall provide for:
      a. Private communication with inmates;
      b. Be located in close proximity to the waiting area;
   3. An office area which shall be of sufficient space to house the
administrative function of the jail; and
   4. An entrance to the security area which shall:
      a. Provide secure access to the security area;
      b. Be of penal-type; and
      c. Have access controlled from the security area.
(3) Security area. (d) Security areas: The area shall enclose
those [all] facilities and services required for or used by prisoners [the
inmates]. It shall contain the following function areas:
(a) Control area. This area shall be located in close proximity to
the prisoner entrance and shall be used to monitor the movement of
prisoners in and out of the facility.
(b) Visitation. Adequate space shall be made available for contact
visits between prisoners and families. Tables and chairs shall be pro-
vided. Bathroom facilities shall be available to serve this area.
(c) Booking area. The purpose shall be to provide a private and
separate area, properly equipped to carry out admission and release
procedures. All equipment shall be penal-type. This area shall be
designed for different classes of inmates. Design features for this area
shall include:
   1. Close proximity to secure area for storage of inmate personal
property;
   2. Close proximity to an area for photography and fingerprinting;
   3. Close proximity to an area for temporary holding and detention;
   4. Close proximity to temporary holding and detention cells;
   5. Located in a manner to be monitored by a control room.
(e) Detoxification area. The purpose shall be to provide an area to
detoxify intoxicated inmates from the general inmate population.
Design features shall include:

- 1577 -
1. A minimum of fifty (50) square feet per inmate.
2. A minimum of eight (8) feet ceiling height.
3. One (1) bunk of approved material thirty (30) inches wide by
   seventy-two (72) inches long by four (4) inches high for each
   inmate.
4. A single common, lavatory and a flush floor drain controlled
   outside the cell.
5. A hubble type drinking fountain.
6. All fixtures and equipment shall be penal type.
7. All horizontal surfaces shall be smooth, and free of sharp
   edges and protrusions.
8. All floor material shall be approved masonry, concrete or
   steel construction.
9. Each detainee cell shall have sufficient penal type fixtures
   capable of providing twenty (20) foot-candles of light with a
   nighttime capability of providing five (5) foot-candles of light.
10. Holding Areas: The purpose of holding areas shall be for
    temporary detention not to exceed four (4) hours in secure
    holding or eight (8) hours in diversion holding.

   a. Design features for secure holding shall include:
      1. Twenty-five (25) square feet per inmate; minimum size
         of the area shall be fifty (50) square feet.
      2. Eight (8) feet ceiling height.
      3. One (1) perimeter by per capita.
      4. All equipment shall be penal type.
      5. One (1) perimeter lavatory and common;
      6. One (1) perimeter light fixture capable of providing twenty
         (20) foot-candles of light.
   b. Ceilings, walls, surfaces of wall bases and floors shall be of
      approved masonry, concrete or steel construction.

   2. If a diversion holding area is provided, features and
      requirements include:
      1. Twenty-five (25) square feet per inmate; minimum size
         of area shall be fifty (50) square feet.
      2. Total capacity not to exceed twenty-four (24) persons.
      3. One (1) bathroom for a capacity of eight (8) or less; two
         (2) bathrooms for a capacity of nine (9) or more;
      4. At least one (1) water fountain shall be located in area;
      5. Phone system shall be available for use by inmates;
      6. Construction shall be fire rated with penal hardware, windows
         and doors;

   3. Furnishings shall not include beds but chairs and tables per
      capacity and shall be fire rated.

   4. Unobstructed view into area shall be provided;

   5. Areas shall have constant in-person surveillance;

   6. If inmates housed in area during normal meal times; they shall
      be fed. Meals do not have to be hot;

   7. Policy and procedure shall set forth criteria for placement
      of inmates in this area.

   (g) Medical Exam Room: The purpose of this room shall be to
      provide a separate and secure area for medical examinations
      and rendering medical treatment. Design features shall include:
      1. Minimum dimension shall be eight (8) feet.
      2. Minimum ceiling height shall be eight (8) feet.
      3. One (1) lavatory or counter sink.
      4. One (1) work counter.
      5. Secured lockers for medical equipment, medical instruments;
         medications, bandages, etc., secured to the floor or walls
         or a secure closet;
      6. One (1) or more medical examination tables;
      7. Electrical power outlets shall be provided in this room;
      8. All ceilings, walls, and floors shall be approved masonry;
         concrete or steel construction;
      9. If medical services are provided outside the jail, the jail shall
         have a secure area for storage of medication and medical
         equipment;
      10. Visiting area, inmate side. The purpose shall be to provide
          secure and private visitation for the inmates. All equipment
          and furnishings shall be of penal type and permanently
          attached;

   (i) Conference Area [room]. The purpose of this area is to provide
      space for confidential conferences between prisoners [inmates]
      and lawyers, counselors [probation officers], clergy, etc. A table
      and chairs shall be provided. (d) Living Areas.

   1. Each sleeping room shall provide a minimum of fifty (50) square
      feet per prisoner. No more than thirty-six (36) prisoners shall
      be placed in a single sleeping room.

   2. Each prisoner shall be provided in the sleeping room, at a
      minimum: bed, mattress and pillow, supply of bed linens, chair
      and closet or locker space for the storage of personal items.

   3. A sleeping area shall have lighting of at least twenty (20)
      foot-candles in the reading and grooming area, with a nighttime
      capability of providing five (5) foot-candles of light.

   4. The facility shall have one (1) toilet for every eight (8)
      prisoners, one (1) wash basin for every eight (8) prisoners and
      a shower for every sixteen (16) prisoners. One (1) urinal may be
      substituted for each commode in male areas but the commodes
      shall not be reduced by less than half (1/2) the number required.

   5. Phone facilities shall be available for prisoner use.

   6. Each occupied area shall have temperature ranges within
      comfort zones, sixty-five (65) degree Fahrenheit to eighty-five
      (85) degree Fahrenheit.

   7. Each occupied area shall have ventilation to meet air exchange
      as required by the Kentucky Building Code, 815 KAR 7-105. [Design
      features shall include:
      1. Doors, windows, and light fixtures shall be penal type;
      2. Walls, floors, and ceilings shall be of approved masonry,
         concrete or steel construction;
      3. Furnishings shall be noncombustible/non-toxic as approved by
         the Department of Corrections;
      4. Multipurpose room: The purpose of this area shall be to
         provide space for assembly of inmates for specific program
         activities. This area shall allow at least twenty-five (25)
         square feet per inmate in an area with a minimum of 250
         square feet. Design features shall include:
         1. Doors, windows, and light fixtures shall be penal type;
         2. Walls, floor, and deck shall be of approved masonry,
            concrete or steel construction;
         3. Furnishings shall be noncombustible/non-toxic as approved by
            the Department of Corrections;
         4. Ceiling shall be of approved construction;
      5. Outdoor recreation: The purpose of this area shall be to
         provide secure outdoor space for recreational activities. This
         area shall allow at least thirty-five (35) square feet per inmate in
         an area with a minimum of 350 square feet;
      6. [g] Kitchen. The purpose of this area is [shall be] to provide
         sufficient space and equipment for preparing meals for the
         maximum rated capacity of the jail. Design features shall include:
         1. Compliance with standards for [of] the State Retail Food
            Service Code, 902 KAR 45-005. If food is not prepared in the
campus distribution area shall be substituted;
      7. Laundry facilities. Laundry facilities shall be available.
      8. Furnishings: Jail furnishings shall be noncombustible and
         nontoxic as approved by the department.

   8. Commercial Type Stoves and Refrigeration Units;
        1. Doors and windows shall be penal type;
        2. Walls, floors, and ceilings shall be approved fire rated
           masonry, concrete or steel construction;

   9. Control Room. The purpose of this area shall be to control all
      movement of inmates within the jail and traffic in and out of the
      security area. Also, this area shall be the hub for operations within
      the jail. Design features shall include:
        1. Doors and windows shall be of penal type;
        2. Walls, floors, and ceilings shall be approved masonry, concrete
           or steel construction;

   10. Audio and video monitors shall be located in this area;
        1. Gauges, indicators, and alarms shall be located in this area;
        2. Central control panels shall be located in this area;
        3. This area shall provide visual observation of all corridors,
           entrances, and exits under its supervision;

   11. When jail staff are not within normal hearing distance of
       inmates, an electro communication system shall be installed to
       allow staff to communicate with inmates.

   12. A panic button, cell call station or portable communication
       device shall be installed or available in corridors and staff
       observation areas; which shall sound an alarm in the control center in
       the event of

   - 1578 -
an emergency situation.

(9) Confinement areas: The purpose of these areas shall be to provide suitable living conditions for all types of inmates lodged in the jail. Design features for all living areas shall include:

1. Providing sufficient natural or artificial light to provide twenty (20) foot-candles with a nighttime capable of providing five (5) foot-
candles of light.

2. Providing ventilation to meet air-exchange as required in the
state health codes.

3. Providing temperature ranges within comfort zones sixty-five (65) degrees Fahrenheit - eighty-five (85) degrees Fahrenheit.

4. Shall be of approved masonry, concrete or steel construction.

5. All furnishings and equipment shall be penal type and perma-
nently attached.

6. Each confinement area shall have floor-drains to service each
living area.

7. Be equipped with an approved securable food pass.

8. Electrical outlets when provided shall be ground faulted or have
ground fault circuit breakers. Receptacle and switch plate covers shall
be penal type.

(2) All cells and housing areas design features shall include:

(a) Prisoner living areas shall be equipped with the security hard-
ware to meet the security requirements of the inmate(s) housed in the
area. Depending on the size of the jail at least one (1) living area shall
be designed at high security and be equipped with a safety vestibule
to enter the living area.

(b) Depending on the size of jail one (1) or more isolation single-
man cells shall be provided.

(c) All cells shall open into a dayroom and no cell shall be less
than seventy (70) square feet. No cell shall have more than two (2)
penal type bunks. When two (2) persons are housed in a cell, they
shall not be detained in the cells for longer periods than twelve (12)
hours.

(d) Each cell shall contain:

1. A penal type commode, lavatory and drinking fountain; penal type-

   bunk secured to floor and/or wall; penal type table with two (2)

   seats; and penal type storage area for personal property.

2. A penal type light fixture with controls nonaccessible to inmates

   unless it has staff override.

(e) The jail shall provide living space for low security inmates in-
cluding work release and community service workers. This area shall
be either cells opening into a dayroom or a combination of this and
multiple occupancy dorms. If dorms are used, they must include:

1. Fifty (50) feet per inmate.

2. One (1) commode/lavatory/drinking fountain per eight (8) in-
mates.

3. One (1) urinal may be substituted for each commode in male
areas but in no instance shall the commodes be reduced to less than
one-half (1/2) the number required.

4. One (1) shower per sixteen (16) inmates.

5. Sufficient tables and benches to handle the number of inmates

   housed in the dorm.

6. One (1) penal type storage area for personal property per in-
mate.

7. One (1) penal type bunk secured to floor or wall per inmate.

(f) Each dayroom area shall contain:

1. Thirty-five (35) square feet per inmate.

2. One (1) commode per eight (8) inmates. One (1) urinal may be

   substituted for each commode in male areas but in no instance shall

   the commodes be reduced to less than one-half (1/2) the number

   required.

3. One (1) lavatory per eight (8) inmates.

4. One (1) drinking fountain per sixteen (16) inmates.

5. One (1) shower per sixteen (16) inmates.

6. Tables and benches per rated capacity with space twenty-four

   (24) inches wide and twelve (12) inches deep per inmate.

DOUG SAPP, Commissioner
APPROVED BY AGENCY: November 13, 2000
FILED WITH LRC: November 15, 2000 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regu-
lation shall be held on December 21, 2000, at 9 a.m., in the Office
of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky.
Individuals interested in being heard at this hearing shall notify the
agency in writing by December 14, 2000, five days prior to the hear-
ing, 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. 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: Tamela Biggs or Jack Damron, Staff Atto-
neys, Kentucky Department of Corrections, 2439 Lawrenceburg Road,
P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number
(502) 564-2024, Facsimile Number (502) 564-6949.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tamela Biggs, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation es-

   tablishes standards and procedures to be followed in the design

   and construction of jails.

(b) The necessity of this administrative regulation: To conform to

   the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of

   the authorizing statutes: The regulation governs every aspect of

   the renovation or construction of jails and measures compliance of exist-

   ing jails.

(d) How this administrative regulation currently assists or will as-

   sist in the effective administration of the statutes: By providing to a

   county government seeking to remodel an existing jail or construct a

   new jail, a consultant knowledgeable in the design, utilization, and

   operation of jails.

(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 will comply with KRS Chapter 13A;

   change inmate to Prisoner throughout the regulation; remove the re-

   quirement for the type of doors a sally port shall have from the defini-

   tion of sally port, to the chapter which sets forth the requirements for

   the physical plant portion of the jails.

(b) The necessity of the amendment to this administrative regula-

   tion: To conform to the requirement of KRS 441.055.

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

   statutes: It permits the commissioner or his authorized representative

   to implement or amend practices or procedures to ensure the safe and

   efficient operation of jails.

(d) How the amendment will assist in the effective administration

   of the statutes: This regulation will help jails to operate more efficiently.

(3) Type and number of businesses, organizations, or state and local
governments affected by this administrative regulation: 18 centers which
house 1650 full service residents in those facilities.

(4) Provide an assessment of how the above group or groups will

be impacted by either the implementation of this administrative regu-

lation, if new, or by the change if it is an amendment: To provide clear

and concise direction and information in the design and construction of

jails.

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

administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the imple-

mentation and enforcement of this administrative regulation: Funds

budgeted for this 1998-2000 biennium.

(7) Provide an assessment of whether an increase in fees or fund-

ing shall be necessary to implement this administrative regulation, if

new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes

any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in

this administrative regulation because the administrative regulation

applies equally to all those individuals or entities regulated by it. Dispa-
rate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. County jails.
3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to local jail correctional systems.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
   Revenues (+/-): 0
   Expenditures (+/-): 0
   Other Explanation: None

JUSTICE CABINET
Kentucky Department of Corrections (Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Department of Corrections Policies and Procedures, Volume I, November 14 [August 14], 2000":

1.1 Legal Assistance for Corrections Staff
1.2 News Media
1.4 The Monitoring and Operation of Private Prisons
1.9 Institutional Duty Officer
1.11 Population Counts and Reporting Procedures
1.12 Operation of Motor Vehicles by Department of Corrections Employees
2.1 Inmate Canteen
2.2 Warden's Fund
2.10 Surplus Property
3.1 Code of Ethics
3.3 Holding of Second Jobs by Corrections' Employees
3.5 Sexual Harassment
3.6 Criminal History Checks on All Personnel and the Employment of Exoffenders
3.7 Shifts, Posts and Days Off Assignment
3.12 Institutional Staff Housing
3.18 Employee Insurance Coverage [Amended 8/14/00]
3.20 Communication and Recording Devices
4.2 Staff Training and Development
4.3 Firearms and Chemical Agents Training
4.6 Operation and Safety of Corrections Firing Ranges [Amended 8/14/00]

(b) "Department of Corrections Policies and Procedures, Volume II, November 14 [August 14], 2000":

18.1 Classification of the Inmate
18.2 Central Office Classification Committee
18.5 Custody and Security Guidelines
18.7 Transfers
18.9 Out-of-state Transfers
18-10-01 Preparole Progress Reports
18.11 Placement for Residential Mental Health Treatment [Amended 6/14/00]
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill [Amended 8/14/00]
18.13 Population Categories
18.15 Protective Custody
18.17 Interstate Agreement on Transfers
18.18 International Transfer of Inmates
19.1 Government Services Projects
19.2 Community Services Projects
19.3 Inmate Wage Program [Amended 11/14/00]
and ACA Standards. 
(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 196.035 and 197.020. 
(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Corrections and its divisions and institutions. 
(d) How the amendment will assist in the effective administration of the statutes: It will make minor changes to conform to KRS Chapter 13A, to allow a clearer understanding of the policies by employees, the inmate population, and offenders under the supervision of probation and parole, thereby impacting the safety and security of the institutions and the public. 
(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions. 
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To ensure a clearer understanding of the policies by employees, the inmate population and the offenders under the supervision of probation and parole, thereby impacting the security and safety of the institutions and the public. 
(5) Provide an estimate of how much it will cost to implement this administrative regulation: 
(a) Initially: None 
(b) On a continuing basis: None 
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 1999 - 2000 biennium. 
(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None 
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None 
(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. 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. 

JUSTICE CABINET 
Division of Corrections 
(Amendment) 

501 KAR 7:070. Safety; emergency procedures. 
RELATES TO: KRS 441.045, 441.055. 
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1). 
requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners [detention facilities]. This administrative regulation establishes [sets forth] safety and emergency procedures to be followed in restricted custody centers. 

Section 1. Policy and Procedure. (1) Each center shall have a written policy and procedure which specify fire prevention administrative regulations and practices to ensure the safety of prisoners [residents], visitors, and staff. The policy [These] shall include [but not be limited to]: 
(a) Provision for a [el] fire emergency planning sessions for staff [and residents] at least quarterly; 
(b) Written documentation of fire planning session [sessions]; 
(c) A fire safety inspection by the department [of Corrections] at least once a year; 
(d) Inspection and testing of fire protection equipment by a qualified person [persons] at least annually with visual inspections by staff monthly; 
(e) Smoking restrictions and [administrative] regulations; and 
(f) An [written] evacuation plan coordinated with local fire officials. 
(2) Each center shall have written policy and procedures for emergency situations including [but not limited to]: 
(a) Escape [Escapes]; 
(b) Hostage taking [of hostages]; 
(c) Riot [Riots]; 
(d) Food poisoning; 
(e) Civil disturbance [disturbances] in the community; 
(2) Natural disaster [disasters]; 
(g) Suicide [Suicides]; and 
(h) Other death [deaths] and disorder. 

Section 2. Physical Plant. (1) The center shall comply with the Kentucky Building Code, [NFPA Life Safety Code (1989 Edition)] which is hereby incorporated by reference in 815 KAR 7:050. An existing center for which approval has been granted may continue without change, except when an alteration, addition or change of occupancy occurs. 
(2) Each exit shall be: 
(a) [center shall have exits which are] Distinctly and permanently marked; 
(b) Visible at all times; 
(c) Kept clear; and 
(d) Maintained in usable condition. 
(3) Each center shall have equipment necessary to maintain essential lights power, and communications in an emergency situation. 
(4) In each area where a prisoner may be confined, there shall be an emergency smoke evacuation system activated by smoke detectors and operated by emergency power. [Each center shall have an approved fire alarm and smoke detection system.] 
(5) Each center shall have an approved fire alarm and smoke detection system. 
(6) Each direct supervision area shall have an approved fire suppression system. [Each center may be required to install an approved sprinkler system and/or a smoke evacuation system]. 

DOUG SAPP, Commissioner 
APPROVED BY AGENCY: November 13, 2000 
FILED WITH LRC: November 15, 2000 at 10 a.m. 
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five 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. 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: Tamela Biggs or Jack Damron, Staff Attorneys, Kentucky Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494. 

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT 
Contact Person: Tamela Biggs, Staff Attorney 
(1) Provide a brief summary of: 
(a) What this administrative regulation does: This regulation establishes safety and emergency procedures to be followed in restricted custody centers. 
(b) The necessity of this administrative regulation: To conform to the requirements of 441.055. 
(c) How this administrative regulation conforms to the content of 

- 1582 -
the authorizing statutes: The regulation complies with KRS Chapter 13A, requires that each jail comply with the Kentucky Building Code and permit an existing, approved jail to continue without change, unless alterations, additions or changes occur.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to ensure the safety of the restricted custody facilities.

(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 complies with KRS Chapter 13A and requires that each jail comply with the Kentucky Building Code and permit an existing, approved jail to continue without change, unless alterations, additions or changes occur.

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

To conform to the requirement of KRS 41.055.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of restricted custody facilities.

(d) How the amendment will assist in the effective administration of the statutes: This regulation provides a clear and concise direction to help jails to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

18 jails which house 1650 restricted custody prisoners.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To provide a clear and concise direction to help jails to operate more safely and efficiently.

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

(a) Initially: None

(b) On a continuing basis: None

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 1998-2000 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation affects: County jails.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to local jail correctional systems.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0
Expenditures (+/-): 0
Other Explanation: None
subject to visual inspection of the torso, female breast, genital area, anal area, and other body cavities.

DOUG SAPP, Commissioner
APPROVED BY AGENCY: November 13, 2000
FILED WITH LRC: November 15, 2000 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five 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. 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: Tamela Biggs or Jack Damron, Staff Attorneys, Kentucky Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6949.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tamela Biggs, Staff Attorney
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes definitions for KRS 501 KAR Chapter 10 regulating direct supervision facilities.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.
(c) How this administrative regulation conforms to the content of the authorizing statutes: Complies with KRS Chapter 13A and removes the requirement for the type of doors a sally port shall have from the chapter which sets forth the requirements for the physical plant portion of the jail.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to employees and the inmate population.
(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 comply with KRS Chapter 13A and removes the requirement for the type of doors a sally port shall have from the chapter which sets forth the requirements for the physical plant portion of the jail.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 441.055.
(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of jails.
(d) How the amendment will assist in the effective administration of the statutes: This regulation provides a clear and concise direction which shall help jails to operate more efficiently.
(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 18 direct supervision jails which house 1650 prisoners.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To provide a clear and concise direction to help jails to operate more efficiently.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) Sources of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 1998-2000 biennium.
(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. County jails.
3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to local jail correctional systems.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
   Revenues (\(\Delta\)): 0
   Expenditures (\(\Delta\)): 0
   Other Explanation: None

JUSTICE CABINET
Department of Corrections
Division of Local Facilities
(Amendment)


RELATES TO: KRS 441.045, 441.055, 441.064, 441.075
STATUTORY AUTHORITY: KRS 192A.065, 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation establishes [text forth] standards and procedures to be followed in the design and construction of jails.

Section 1. Purpose. The purpose of this administrative regulation is to provide minimum standards for the renovation and [or] construction of jail facilities and for measuring compliance of existing jails in accordance with KRS 441.055, 441.064, and 441.075 [441.011, 441.012, and 441.016; and Kentucky CorrectionsRemodeling Standards].

Section 2. Consultation. The department of [or- Corrections] shall provide to a [for-any] county government seeking [which-wishes] to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails. The consultant shall meet with the appropriate officials of that county and advise them concerning:
   (1) Site selection; [\(\_\)]
   (2) Probable need as it relates to capacity and types of prisoners [inmates] to be housed; [\(\_\)]
   (3) Sources of financing for constructing; [\(\_\)]
   (4) Laws and administrative regulations relating to treatment of prisoners [inmates]; [\(\_\)]
   (5) Laws and administrative regulations relating to facilities for prisoners [inmates]; [\(\_\)]
   (6) Sources of revenue for operations of the jail; [\(\_\)]
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(7) Probable cost for operation of the jail; and [ ]
(8) Potential for sharing [shared] facilities with adjoining counties.

Section 3. Site Acceptance. A [No] jail shall not be built without site acceptance by the department of [Corrections]. The following criteria shall be considered in site selection:
(1) Size; [ ]
(2) Proximity of court; [courts;]
(3) Proximity of community resources; [ ]
(4) Availability of public transportation; [ ]
(5) Environmental health; [ ]
(6) Adequate parking; and [ ]
(7) Provisions for future expansion.

Section 4. Construction Documents. Prior to the renovation or construction of any jail, plans and specifications shall be submitted to the department of [Corrections] for review and approval. Plans and specifications for jail renovation or construction shall contain the following criteria and documentation:
(1) For major renovation or new construction, a programming phase, to include [containing ren]:
(a) Evaluation of existing facility;
(b) Population analysis;
(c) Space requirements based on population analysis and standards for the facility and site outlined in this administrative regulation [the Kentucky Minimum-Standards for Local Jails];
(d) Staffing analysis;
(e) Cost analysis to include construction and operation costs;
(f) Financing alternatives, if applicable;
(g) Design-construction time schedule; and
(h) Summary and recommendations;[ ]and
(i) Information concerning the programming phase shall only be submitted:
1. On major renovation or new construction; and
2. For information review purposes.
(2) A schematic phase containing:
(a) A scale drawing [Scale drawings] of each floor plan with [all] proposed rooms and areas one-eighth (1/8) inch minimum;
(b) A scale drawing [Scale drawings] of the site, locating the building, parking and other facilities one (1) inch equals fifty (50) feet;
(c) Documentation of site as to:
1. Size;
2. Proximity to court [courts];
3. Proximity to community resources;
4. Availability of public transportation;
5. Environmental health;
6. Adequate parking; and
(d) Sections through the proposed structure indicating ceiling heights of rooms, mechanical spaces, roof slopes and other related information;
(e) Scale elevation drawing [drawings] of all exterior walls;
(f) Schematic cost estimate to include revised construction and operation costs; and
(g) A revised design-construction time schedule.
(3) A design development phase containing:
(a) A scale drawing [Scale drawings] on each floor plan with [all] proposed rooms and areas with their dimensions one-eighth (1/8) inch minimum;
(b) All necessary construction drawings including construction details;
(c) Specifications for [all] materials and workmanship;
(d) A proposed contract with general and special conditions;
(e) Engineering calculations for the foundations, structure, heating, ventilating, air conditioning, lighting and plumbing; and
(f) Detailed estimates of cost of land, site development, construction, financing, professional services, equipment and furnishings.
(4) A construction document phase containing:
(a) Revised design development construction drawings following review by all applicable agencies signed by an architect registered in the Commonwealth of Kentucky and revised, if necessary, to include [all] changes required by the department; and [of Corrections;]
(b) Revised design development specifications of material and workmanship following review by all applicable agencies.
(5) A contract administration phase containing:
(a) Signed copies of the [all] contracts for construction, financing, and bonding;
(b) Signed copies of the [all] construction permits; and
(c) Documentation of required review by [all] other applicable state agencies,
(6) Every [ ] and
(7) [All] change order [orders] shall be submitted to the department of [Corrections] for review and approval.

Section 5. Approval of Renovation, Construction Plans and Specifications. (1) Construction shall not begin until the construction document phase has been approved. The department of [Corrections] shall:
(a) Review each submission [all submissions] within thirty (30) days of receipt;
(b) [and] issue a letter of;
1. Approval;
2. Acceptance with required changes; or
3. Rejection, with reasons stated. [No construction shall be started until the construction document phase as required in Section (4) of this administrative regulation has been approved.]
(2) Depending on the site of the proposed constructions, renovation or addition the department of [Corrections] may combine two (2) or more phases, as outlined in Section 3 of this administrative regulation, [above] for review and approval.
(3) A change to the plan shall require redrawing unless specifically exempted by the department. Specifications shall be rewritten to reflect a change. [All changes prior to the approval of final-construction documents shall require appropriate modifications to the final-construction documents including redrawing of plans and rewriting of specifications. All changes after the approval of final-construction documents shall require adequate documentation which fully describes and illustrates the changes which may include written or graphic addenda, field orders and change orders. In addition a set of accurate as-built drawings shall be submitted to the Department of Corrections within sixty (60) days of occupancy of the facility.]

Section 6. Waiver of Compliance. (1) The department of [Corrections] may grant a waiver of the implementation of the physical plant standards for an existing jail if the department determines:
(a) That strict compliance shall [will] cause unreasonable difficulties;
(b) That a waiver shall [will] not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail; and
(c) That compliance shall [is to] be achieved in a manner other than that which is specified, but in a manner which is sufficient to meet the intent of this administrative regulation [these standards].
(2) When a waiver from a standard is desired, the responsible local authority shall submit a written request to the department of [Corrections]. The written request shall include the following information:
(a) Citation of the specific standard involved;
(b) Identification and description of the specific difficulties involved in meeting strict compliance;
(c) Description of the alternative proposed; and
(d) Provision of sufficient documentation which shall [will] demonstrate that the waiver, if granted, shall [will] not jeopardize the security, supervision of prisoners [inmates], programs, or the safe, healthful, or efficient operation of the jail.
(3) A waiver, if granted by the department of [Corrections], shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. Any [No] waiver shall not be granted for longer than twelve (12) months. A [Any] waiver granted for a twelve (12) month period shall be reviewed for reapproval at the end of the period [for reapproval].

Section 7. Facility Design. (1) Each jail shall have two (2) separate entrances: a prisoner entrance and a service entrance. The department may permit these entrances to be combined.
(a) Prisoner entry. The purpose of this entrance shall be to provide secure and controlled access to the jail for prisoners.

(b) Depending upon its size and intended use, every jail shall include within its walls the following facilities and equipment:

(1) Entrances. Every jail shall have three (3) separate and distinct entrances: a public entrance; an adult inmate entrance; and a service entrance. The Department of Corrections may permit those entrances to be combined:

(i) Public entrance. The purpose of this entrance shall be to divert the general public from the security area of the jail and from contact with incoming inmates. This area shall be the location for the general public to conduct their business at the jail. The following design features shall be incorporated:

a. Provide a clear view of this from the control room by means of direct surveillance or closed-circuit T.V.

b. Meet the requirements for handicapped persons.

2) Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It [may contain a loading dock and] shall be located in close proximity to storage rooms and the kitchen area.

(3) Adult inmate entrance. The purpose of this entrance shall be to provide secure and private access to the jail for incoming inmates. This entrance shall be served by a drive-in sallyport or a secure walk-in vestibule and shall incorporate the following design features:

a. Be located adjacent to the booking area.

b. Be monitored from the control room.

c. Be free of steps or other obstructions.

d. Be protected from inclement weather.

e. Have a security penal type pupil locker in sallyport or vestibule.

f. All hardware and equipment shall be of approved penal type.

(2) Each exit in the security area shall be secured. (b) Exit: All openings in the security perimeter shall be secured with penal devices. Fire exits, when possible, shall open into controlled, secured courts and exercise areas.

(c) Administrative areas. Administrative areas shall provide space outside the secured area of the jail for the housing of administrative offices and to accommodate the public. Administrative areas shall contain the following additional areas:

1. A waiting area which shall provide:

a. Space for the general public; and

b. Protection from inclement weather;

c. The waiting area shall have toilet facilities and drinking fountains in new jails;

2. A visiting area: public side which shall provide for:

a. Private communication with inmates; and

b. Be located in close proximity to the waiting area;

3. An office area which shall be of sufficient space to house the administrative function of the jail; and

4. An entrance to the security area which shall:

a. Provide secure access to the security area;

b. Be of penal type; and

c. Have access controlled from the security area.

(3) Security area. (d) Security areas. The area shall enclose those facilities and services required for or used by prisoners. It shall contain the following function areas:

(a) Control area. This area shall be located in close proximity to the prisoner entrance and shall be used to monitor the movement of prisoners in and out of the facility.

(b) Visitation. Adequate space shall be made available for contact visits between prisoners and families. Tables and chairs shall be provided. Bathroom facilities shall be available to serve this area.

(c) Booking area. The purpose shall be to provide a private and separate area properly equipped to carry out admission and release procedures. All equipment shall be penal type. This area shall be designed for different classes of inmates. Design features for this area shall include:

1. Close proximity to a secure area for storage of inmate personal property.

2. Close proximity to an area for photography and fingerprinting;

3. Close proximity to an area for showering, delousing, and strip searching inmates which assures privacy for the inmate.

4. Close proximity to temporary holding and detoxification cells.

5. Located in a manner to be monitored by a control room.

(e) Detoxification area. The purpose shall be to provide an area to separate intoxicated inmates from the general inmate population. Design features shall include:

1. A minimum of fifty (50) square feet per inmate.

2. A minimum of eight (8) feet ceiling height.

3. One (1) bunk of approved material thirty (30) inches wide by approximately two (2) inches long by four (4) inches high for each inmate.

4. A penal commode, lavatory and a flush floor drain controlled from outside the cell.

5. A bubble-type drinking fountain.

6. All fixtures and equipment shall be penal type.

7. All surfaces inside the area shall be smooth, flush, and free of sharp edges and protrusions.

8. All horizontal surfaces (the bunk and the floor) shall be sloped (one-fourth (1/4)) of an inch to the foot to the floor drain.

9. All protruding corners (except at ceiling) shall be covered.

10. Ceiling: walls; surfaces of the wall-base and floors shall be of approved masonry, concrete or steel construction.

11. Each detox cell shall have sufficient penal type fixture(s) capable of providing twenty (20) foot-candles of light with a nightlight capable of providing five (5) foot-candles of light.

(f) Holding areas. The purpose of holding areas shall be for temporary detention not to exceed four (4) hours in secure holding or eight (8) hours in diversion holding:

1. Design features for secure holding shall include:

a. Twenty-five (25) square feet per rated capacity; minimum size of the area shall be fifty (50) square feet.

b. Eight (8) feet ceiling height.

c. One (1) penal type lavatory per rated capacity.

d. All equipment shall be penal type.

e. One (1) penal type lavatory and commode.

f. One (1) penal type light fixture capable of providing twenty (20) foot-candles of light.

g. Ceilings; walls; surfaces of wall-base and floors shall be of approved masonry, concrete or steel construction.

2. If a diversion holding area is provided, features and requirements shall include:

a. Twenty-five (25) square feet per rated capacity; minimum size of area shall be fifty (50) square feet.

b. Total rated capacity not to exceed twenty-four (24) persons.

c. One (1) bathroom for a rated capacity of eight (8) or less; two (2) bathrooms for a rated capacity of nine (9) or more.

d. At least one (1) water fountain shall be located in area.

e. Phone system shall be available for use by inmates.

f. Construction shall be fire-rated with penal hardware, windows and doors.

g. Furnishings shall include beds, chairs and tables per rated capacity and shall be fire rated.

h. Unobstructed view into area shall be provided.

i. Areas shall have constant in-person surveillance.

j. If inmates housed in area during normal meal times, they shall be fed. Meals shall not be hot; and

k. Policy and procedure shall set forth criteria for placement of inmates in this area.

(g) Medical examination area. The purpose of this area shall be to provide a separate and secure area for medical examinations and rendering medical treatment. If medical services are provided outside the jail, the jail shall have a secure area for storage of medication and medical equipment. Design features shall include:

1. Minimum dimension shall be eight (8) feet.

2. Minimum ceiling height shall be eight (8) feet.

3. One (1) lavatory or counter sink.

4. One (1) work counter.

5. Secure lockers for medical equipment, medical instruments, medications, bandages, etc., secured to the floor or walls or a secure closet.

6. One (1) or more medical examination tables.

7. Electrical power outlets shall be provided in this room.

8. All ceilings, walls, and floor shall be approved masonry, concrete or steel construction.

(h) Visiting area; inmate side. The purpose shall be to provide secure and private visitation for the inmates. All equipment and furnishings shall be of penal type and permanently attached.]
(c) Conference area. ([i]) Conference room. The purpose of this space is to provide space for confidential conferences between prisoners and lawyers, counselors, clergy, etc. A table and chairs shall be provided.

(d) Living areas.
1. Each sleeping room shall provide a minimum of fifty (50) square feet per prisoner. No more than thirty-six (36) prisoners shall be placed in a single sleeping room.
2. Each prisoner shall be provided in the sleeping room, at a minimum: bed, mattress and pillow, supply of bed linens, hair, and closet or locker space for the storage of personal items.
3. A sleeping area shall have lighting of at least twenty (20) foot-candles in the reading and grooming area, with a nightlight capable of providing five (5) foot-candles of light.
4. The facility shall have one (1) toilet for every eight (8) prisoners. One (1) wash basin for every eight (8) prisoners and a shower for every sixteen (16) prisoners. One (1) urinal may be substituted for each commode in male areas but the commodes shall not be reduced to less than one-half (1/2) the number required.
5. Phone facilities shall be available for prisoner use.
6. Each occupied area shall have temperature ranges within comfort zones, sixty-five (65) degree Fahrenheit to eighty-five (85) degree Fahrenheit.
7. Each occupied area shall have ventilation to meet air exchange as required in the Kentucky Building Code 815 KAR 7:105. [Design features shall include:
1. Doors; windows; and light fixtures shall be of fire rated concrete or steel construction.
2. Walls, floors, and ceilings shall be of approved masonry; concrete or steel construction.]
3. All furnishings shall be noncombustible/ammonia as approved by the Department of Corrections.
(j) Multipurpose room. The purpose of this area shall be to provide space for assembly of inmates for specific program activities. This area shall have at least twenty-five (25) square feet per inmate in an area with a minimum of 250 square feet. Design features shall include:
1. Doors; windows; and light fixtures shall be of fire rated concrete or steel construction.
2. Walls, floors, and ceilings shall be of approved masonry; concrete or steel construction.
3. All furnishings shall be noncombustible/ammonia as approved by the Department of Corrections.
(k) Outdoor recreation. The purpose of this area shall be to provide secure outdoor space for recreational activity. This area shall allow at least thirty-five (35) square feet per inmate in an area with a minimum of 750 square feet.
(l) Kitchen. The purpose of this area is to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:
1. Compliance with standards for State Retail Food Service Code, 902 KAR 45:005. If food is not prepared in the facility, a food distribution area shall be substituted.
2. Laundry facilities shall be available.
3. Laundry facilities shall be noncombustible and nonredirective as approved by the department.
[m] Commercial type stoves and refrigeration units.
1. Doors and windows will be of fire rated concrete or steel construction.
2. All doors, floors, and ceilings shall be of approved fire-rated concrete or steel construction.
(n) Control room. The purpose of this area shall be to control all movement of inmates within the jail and traffic in and out of the security area. Also, this area shall be the hub for operations within the jail.
1. Doors and windows shall be of fire rated concrete or steel construction.
2. Walls, floors, and ceilings shall be of approved masonry; concrete or steel construction.
3. Audio and video monitors shall be located in this area.
4. Gauges, indicators, and alarms shall be located in this area.
5. Central control panels shall be located in this area.
6. The area shall permit visual observation of all corridors, entrances, and exits under its supervision.
(n) When jail staff are not within normal hearing distance of inmates, an audio communication system shall be installed to allow staff to communicate with inmates.
(e) A panic button, staff call station or portable communication device shall be installed or available in corridors and staff observation areas, which shall sound an alarm in the control center in the event of an emergency situation.
(p) Confinement areas: The purpose of these areas shall be to provide suitable living conditions for all types of inmates lodged in the jail. Design features for all living areas shall include:
1. Providing sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light.
2. Providing ventilation to meet air exchange as required in the state health codes.
3. Providing temperature ranges within comfort zone: sixty-five (65) degrees Fahrenheit – eighty-five (85) degrees Fahrenheit.
4. Shall be of approved masonry; concrete or steel construction.
5. All furnishings and equipment shall be noncombustible and permanently attached.
6. Each confinement area shall have floor drains to service each living area.
7. Be equipped with an approved secureable food pass.
8. Electrical outlets when provided shall be ground-faulted or have ground-fault circuit breakers. Feasible and switch plate covers shall be fire rated.
9. Direct supervision areas: The purpose of this area shall be to provide suitable living conditions for inmates lodged in the jail whose behavior indicates their need for supervision. A less secure setting under the direct supervision of jail staff, jails which utilize the "direct supervision area" concept shall have a sufficient number of secure cells or dormitories as approved by the Department of Corrections, in order to separate inmates who display negative behavior in direct supervision areas. All direct supervision areas shall have a secure perimeter.
10. Direct supervision area design features shall include:
1. Providing sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light.
2. Providing ventilation to meet air exchange as required in the state health codes.
3. Providing temperature ranges within comfort zone: sixty-five (65) degrees Fahrenheit – eighty-five (85) degrees Fahrenheit.
4. Shall be of approved masonry or concrete construction.
5. All furnishings and equipment shall be commercial type.
6. Electrical outlets shall be ground-faulted or have ground-fault circuit breakers.
7. All cells shall open into a dayroom and no cell shall be less than seventy (70) square feet. No cell shall have more than two (2) commercial type bunks.
8. Inmates shall not be detained in the cells for longer period than twelve (12) hours.
(b) Each cell shall contain:
1. Bed; table; seat; and personal property storage area.
2. A light fixture with control accessible to the inmate.
3. Commode, lavatory, and drinking fountain.
4. Locks used to confine inmates in the cell shall have the capability of gang release.
(e) Each dayroom area shall include:
1. Thirty-five (35) square feet per inmate.
2. One (1) commode per eight (8) inmates.
3. One (1) lavatory per eight (8) inmates.
4. One (1) drinking fountain per sixteen (16) inmates.
5. One (1) shower per sixteen (16) inmates.
6. Tables and chairs per rated capacity with space twenty-four (24) inches wide and twelve (12) inches deep per inmate.
7. Phone system shall be available for use by inmate.
8. Design features shall include items which aid in the acoustical quality of the area.
9. Jail staff shall be in direct supervision of the area at all times.
(a) Each cell and housing areas design features shall include:
(b) Design features shall include items which aid in the acoustical quality of the area.
(c) Depending on the size of the jail at least one (1) living area shall be designed at high security and be equipped with a safety vestibule to enter the living area.
(d) Depending on the size of jail one (1) or more isolation single-
man cells shall be provided:

(c) All cells shall open into a dayroom and no cell shall be less than seventy (70) square feet; No cell shall have more than two (2) penal-type bunks. When two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours.

(d) Each cell shall contain:

1. A penal-type commode, lavatory and drinking fountain, penal type bunk secured to floor and/or wall, penal-type table with two (2) seats, and penal-type storage area for personal property.

2. A penal-type light fixture with controls nonaccessible to inmates unless a staff override.

(e) The jail shall provide living space for low security inmates including work-release and community service workers. This area shall be either cells opening into a dayroom or a combination of this and multiple occupancy dorms. If dorms are used, they must include:

1. Fifty (50) feet per inmate.

2. One (1) commode/lavatory/drinking fountain per eight (8) inmates.

3. One (1) shower per sixteen (16) inmates.

4. Sufficient tables and benches to handle the number of inmates housed in the dorm.

5. One (1) penal-type storage area per personal property per inmate.

6. One (1) penal-type bunk secured to floor or wall per inmate. Each dayroom area shall contain:

1. Thirty-five (35) square feet per inmate.

2. One (1) commode per eight (8) inmates.

3. One (1) lavatory per eight (8) inmates.

4. One (1) drinking fountain per sixteen (16) inmates.

5. One (1) shower per sixteen (16) inmates.

6. Tables and benches that can carry capacity per cell.

DOUG SAPP, Commissioner.

APPROVED BY AGENCY: November 13, 2000

FILED WITH LRC: November 15, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five 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. Anyone who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Tamela Biggs or Jack Damron, Staff Attorneys, Kentucky Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Telephone Number (502) 564-2024, Facsimile Number (502) 564-5494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Tamela Biggs, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes standards and procedures to be followed in the design and construction of jails.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the renovation or construction of jails and measures compliance of existing jails.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing a county government seeking to remodel an existing jail or construct a new jail, a consultant knowledgeable in the design, utilization, and operation of jails.

(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 will comply with KRS Chapter 13A; change inmate to prisoner throughout the regulation; remove the requirement for the type of doors, a sally port shall have from the definition of a sally port, to the chapter which sets forth the requirements for the physical construction of the jail.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 441.055.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner of his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of jails.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will help jails operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 18 centers which house 1550 full service residents in those facilities.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To provide clear and concise direction and information in the design and construction of jails.

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

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 1998-2000 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

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

TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all the individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

- FISCAL NOTE ON LOCAL GOVERNMENT -

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. County jails.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to local jail correctional systems.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (\(\Delta R\)): 0

Expenditures (\(\Delta E\)): 0

Other Explanation: None
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PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Amendment)

806 KAR 4:010. Fees of the Department of Insurance.


STATUTORY AUTHORITY: KRS 61.874(4) 304.2-110, 304.4-010 [1994 Ky. Acts ch. 262, sec. 4(4)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that [authorizes] the Commissioner of Insurance may promulgate reasonable [to adopt] administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the Commissioner of Insurance to prescribe those services for which fees shall be charged and the amounts of the fees. Under KRS 61.874(4), an administrative agency shall charge fees based on costs for public records used for commercial purposes. This administrative regulation prescribes those services for which the Department of Insurance will charge fees and the amounts of those fees. [Under 1994 Ky. Acts ch. 262, sec. 4(4), an administrative agency shall charge fees based on costs for public records used for commercial purposes.]

Section 1. The commissioner shall collect in advance fees as follows:

1. Annual statement.
   (a) Filing each year, $100.
   (b) Filing additional or supplemental statement in the same year, $100.
2. Filing charter documents.
   (a) Original charter document, bylaws, and records of organization, or certified copies thereof required to be filed, $100.
   (b) Amended charter documents, bylaws, and records of organization, or certified copies thereof required to be filed, fifty (50) dollars.
   (a) Issuance of original certificate, $500.
   (b) Amending, to add a line, fifty (50) dollars.
   (c) Renewal, each year, $100.
4. Organization of domestic mutual insurers: filing application for solicitation permit and issuance of such permit, $200.
5. Sell insurer.
   (a) Application to become sell insurer under subtitle 39, $200.
   (b) Notification of self-insurance program under subtitle 32, fifty (50) dollars.
6. Agent licenses, foreign and alien insurers.
   (a) Resident individual agent license, per insurer represented; biennial, forty (40) dollars.
   1. For licensing by initial sponsoring insurer, forty (40) dollars per line of authority of agent.
   2. For appointments by subsequent sponsoring insurers:
      a. Property, casualty, marine and transportation, and surety lines of authority of agent, forty (40) dollars;
      b. Life and health lines of authority of agent, forty (40) dollars; and
      c. All other lines of authority of agent, forty (40) dollars each.
   3. For renewal, biennial:
      a. Property, casualty, marine and transportation, and surety lines of authority of agent, forty (40) dollars;
      b. Life and health lines of authority of agent, fifty (50) dollars; and
      c. All other lines of authority of agent, fifty (50) dollars each.
6. For licensing by initial sponsoring insurer, fifty (50) dollars per line of authority of agent.

   1. For appointments by subsequent sponsoring insurers:
      a. Property, casualty, marine and transportation, and surety lines of authority of agent, fifty (50) dollars;
      b. Life and health lines of authority of agent, fifty (50) dollars; and
      c. All other lines of authority of agent, fifty (50) dollars each.
   2. For renewal, biennial:
      a. Property, casualty, marine and transportation, and surety lines of authority of agent, fifty (50) dollars;
      b. Life and health lines of authority of agent, fifty (50) dollars; and
      c. All other lines of authority of agent, fifty (50) dollars each.
6. Fee for approval of prelicensing training course, fifty (50) dollars; biennial renewal, fifty (50) dollars.
7. Fee for approval of instructors, five (5) dollars per instructor; biennial renewal, five (5) dollars per instructor.
8. Filing agent [and selectee] continuing education course [courses] for:
   (a) Approval, five (5) dollars per hour of continuing education credit; minimum of ten (10) dollars; maximum of $300.
   (b) Biennial renewal, five (5) dollars per hour of continuing education credit; minimum of ten (10) dollars; maximum of $150.
   (c) Resident, fifty (50) dollars.
9. Late fee for individuals:
   1. Residents; forty (40) dollars;
   2. Nonresidents; fifty (50) dollars.
10. Late fee for business entities:
   1. Residents;
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a. Property, casualty, marine and transportation, and surety lines of authority of agent, $100;
   b. Life and health lines of authority of agent, $100; and
   c. All other lines of authority of agent, $100 each.
2. Nonresidents:
   a. Property, casualty, marine and transportation, and surety lines of authority of agent, $120;
   b. Life and health lines of authority of agent, $120; and
   c. All other lines of authority of agent, $120 each.
(16) [[14]] Examination for or in connection with licensing of agents, 
    vice presidents, presidents, and stockholders, $100.
(17) [[15]] Annual registration fee of unauthorized insurer under 
    KRS 304.11-220(2), $500.
(18) Rental vehicle insurance.
   a. Rental vehicle agent, business entity or individual, per insurer 
      represented, biennial, $100.
   b. Registration per location, biennial, fifty ($50) dollars.
   c. Rental vehicle servicing employee, individual, per insurer 
      represented, biennial, forty ($40) dollars.
(19) Specialty credit insurance.
   a. Producer, business entity or individual, per insurer repre-
      sented, biennial, $750.
   b. Registration per location, biennial, $250.
   c. Managing employee, individual, per insurer represented, forty 
      ($40) dollars.
(20) Registration fee of industrial insurers, government entity 
    Insurers, and exempt commercial policyholders under KRS 304.11, 
    $100.
(21) [[16]] Advisory organizations, statistical agents, and form 
    providers.
   a. Application for license, $500.
   b. Annual renewal, $100.
   c. Application for license, $500.
(22) [[17]] Rate and form filings.
   a. Rate level revision filing in a noncompetitive market or other 
      rate level revision filings subject to prior approval by the commissioner, 
      $100.
   b. Credit life or health insurance filing requiring review for compli-
      ance with KRS 304.19-080, $100.
   c. Other rate and form filings, fifty ($50) dollars.
(23) [[18]] Insurance premium finance companies.
   a. Application for license, $500.
   b. Annual renewal, $100.
(24) [[19]] Cost of administering subtitile 32 per membership 
    contract in force on December 31 of each year, except the health insura-
    nce contract or contracts for state employees as authorized by KRS 18A.225, 
    ten (10) cents.
(25) [[20]] Computer printouts of lists, computer printouts of mail-
    ing labels, and electronic or digital media [magnetic tapes]:
   a. Agents:
      1. Property, casualty, surety, marine and transportation, and 
         mortgage guaranty, for computer print-outs of lists or mailing labels, 
         $300, for electronic or digital media, $265.
      2. Life and health, for computer print-outs of lists or mailing labels, 
         $300, for electronic or digital media, $265. [General lines or life and 
         health; $600.]
      3. General lines or life and health; and
      4. Listing for each ZIP code, fifty ($50) dollars.
      5. Appointments (activity) of a specific agent, fifty ($50) dollars.
   b. Adjusters, consultants, managing general agents, [specialists;] 
      surplus lines brokers, and [third-party] administrators, ninety ($90) 
      dollars.
   c. Insurer directories:
      1. All authorized insurers, ninety ($90) dollars.
      2. Insurers by line of insurance, ninety ($90) dollars.
      3. Appointments (activity) by a specific insurer, fifty ($50) dollars.
   d. Business entity [Corporate or partnership agent] and specially 
      credit insurance producers:
      1. Business entity [Corporate or partnership agent] directory, 
         ninety ($90) dollars.
      2. Business entities [Corporate or partnership agents] by line of 
         insurance, ninety ($90) dollars.
3. Appointments (activity) of a specific business entity [corporation or partnership agent], ten (10) dollars.
(26) Special request, printouts, or electronic or digital media 
    [magnetic tapes] not specified in this section, if the request is 
    approved by the commissioner, the commissioner shall establish the cost 
    for the request.
(27) Provider agreement filing, twenty-five ($25) dollars.
(28) Risk-sharing arrangement filing, fifty ($50) dollars.
(29) [[21]] Miscellaneous services.
   a. Filing other documents, each, five ($5) dollars.
   b. Commissioner's certificate under seal, other than certificates, 
      licenses, and other documents provided for in this section, each, five 
      ($5) dollars.
(30) Copy of any document on file with the commissioner, per 
    page, thirty (30) cents.
(31) Copy of annual statements, per page, one (1) dollar.

Section 2. The biennial renewal fees specified in Section 1(6), (7), 
(8), (9), (10), (11), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), 
(28), (29), and (30) of this administrative regulation are payable as follows:
   1. Licenses for life or health insurance shall renew their licenses on or before March 31 in even numbered years and biennially thereafter; and
   2. Licenses for casualty, marine and transportation, property, 
      surety, mortgage guaranty, multiple line insurers, risk retention 
      agent, fraternal benefit societies, or reinsurance intermediaries shall renew 
      their licenses on or before March 31 in even numbered years and biennially 
      thereafter.
   3. Original license and appointment fees shall be the amount 
      stated and not prorated.

Section 3. When a statute or administrative regulation requires payment of a fee as provided in KRS 304.4-010, it refers to a fee as 
specified in this administrative regulation.

GEORGE NICHOLS III, Commissioner
RONALD B. MCLOUD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regu-
lation shall be held on December 21, 2000, at 2 p.m. at the Kentucky 
Department of Insurance, 215 West Main Street, Frankfort, Kentucky 
40601. Individuals interested in being heard at this hearing shall notify 
the commissioner in writing by December 14, 2000, 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 
shall be given an opportunity to comment on the proposed administra-
tive regulation. A transcript of the public hearing will not be made unless 
a written request for a transcript is made. Anyone who does not wish to be 
heard at the public hearing, may submit written comments on the proposed 
administrative regulation. Send written notification of intent to hear at the public hearing or written comments on the proposed 
administrative regulation to the contact person.

CONTACT PERSON: Suetta W. Dickinson, Department of Insur-
ance, P.O. Box 517, Frankfort, Kentucky 40602-0517, (502) 564-6075.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suetta W. Dickinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: Through HB 875, HB 
   354, and HB 595, the 2000 General Assembly altered existing li-
   censes, created new licenses, and significantly altered terminology. 
   This administrative regulation updates the services the department 
   must charge for and sets out the amounts it must charge to avoid an 
   inadvertent increase in agent fees for "general lines" agents and "life 
   and health" agents. It also establishes fees for newly created licenses, 
   registrations, and filings.

(b) The necessity of this administrative regulation: This adminis-
   trative regulation is necessary to clarify the amounts the department is 
   to charge.
(c) How this administrative regulation conforms to the content of the authorizing statute: The related statutes require that the department set out the services it will charge for and the amounts it will charge.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation will inform all individuals and business entities regulated by the department of the fees they have to pay.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation will: maintain the same level of appointment and renewal fees for "general lines" agents and "life and health" agents paid before changes in terminology for "licenses" and "lines of authority" were implemented in accordance with 2000 HB 875; specify the fees for: newly created licenses; rental vehicle agent, rental vehicle managing employee, specialty credit insurance producer, specialty credit insurance managing employee, statistical agents, and form providers; new registrations: business locations of rental vehicle agents and specialty credit insurance producers, insurance departments, government entity insureds, and exempt commercial policyholders; and new filings: pre-licensing training courses and instructors, provider agreements, subcontractor agreements, and risk sharing arrangements. Remove and incorporate current terminology. Replace with terms with newly defined terminology.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to specify fees for newly created licenses and statutes requiring department services, to avoid inadvertent increases in fees for former "general lines" agents and "life and health" agents, and to incorporate current terminology.

(c) How the amendment conforms to the content of the authorizing statute: The related statute requires that the department set out the services for which it charges and the fees it charges.

(d) How the amendment will assist in the effective administration of the statute: This administrative regulation will inform all individuals and business entities regulated by the department of the fees they are required to pay.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all individuals and business entities regulated by the department.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, or by the change if it is an amendment: The fees for individual and business entities that were licensed as "general lines" or "life and health" agents prior to July 14, 2000, will remain the same as the fees were prior to July 14. In addition, applicants for newly created licenses as well as new registrations and new filings made with the department will be able to continue being processed.

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

(a) Initially: There will be some impact on the department in man-hours as new examinations are developed and new applications and paperwork processes are developed for new licensing and registration requirements. It is still anticipated that at least one extra person may have to be hired, as paperwork will be increased by the new licensing categories.

(b) On a continuing basis: Once the department has adjusted to the change there should be no further increase in costs.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation establishes fees for the newly created licenses, registrations, and filings.

(9) TIERING: Is tiering applied? Yes. Tiering is applied to agent fees based on whether the agents are residents or non-residents of Kentucky, whether they are individuals or business entities, and whether they are sponsored by domestic or foreign insurers. This tiering has been present in the insurance regulations since 1986 or before in order to accommodate the additional paperwork required by these differences.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Agent Licensing
(Amendment)

806 KAR 9:001. Prelicensing courses of study [Course of studies]; instructors.

RELATES TO: KRS 304, Subtitle 9
STATUTORY AUTHORITY: KRS 304.2-110, 304.9-105, 304.9-230, 2000 Ky Acts ch 380, sec 26
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate [make reasonable rules and] administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.9-105 requires that the commissioner promulgate administrative regulations to carry out the purpose of the section mandating forty (40) hours of prelicensing course of study for all agents except for limited lines of authority. KRS 304.9-230 requires that the commissioner promulgate administrative regulations regarding prelicensing course of study for limited lines of authority. 2000 Ky Acts ch 380, sec 26 allows the commissioner to promulgate administrative regulations relating to prelicensing courses for rental vehicle managing employees. This administrative regulation establishes the guidelines prescribed by the commissioner of insurance for instructors (directors of instruction) and for courses of instruction to be completed by each person applying for either an agent, specialty credit insurance managing employee, or rental vehicle managing employee (or solicitor) license in the Commonwealth of Kentucky.

Section 1. (1) Except for individuals applying for a limited line of authority as identified in KRS 304.9-230, a specialty credit insurance managing employee, or a rental vehicle managing employee license, all applicant shall complete a minimum of forty (40) hours of prelicensing classroom course of study which includes (The minimum forty (40) hours of classroom instruction requirement applies per license and shall cover the subject matter included in the Insurance Department's current study outlines [manuals] or their equivalent.

(2) Agent applicants for a rental vehicle managing employee license shall complete a prior-approved course of classroom and/or correspondence instruction which shall cover the subject matter included in the Insurance Department's current study outlines, or its equivalent, for the license.

(3) An outline of the content of each prelicensing [this] course of studies, together with the name and qualifications of the instructors, shall [director(s) of instruction must] be submitted in writing to, and approved by, the Department of Insurance prior to authorized use, and shall be renewed biennially.

(4) An applicant for a limited line of authority as identified in KRS 304.9-230 shall not be required to complete any prelicensing course of study for this line of authority.

(5) An applicant for a specialty credit insurance managing employee license shall not be required to complete a prelicensing course of study for this license.

Section 2. Prelicensing courses of study and instructors filed with the commissioner shall be accompanied by the fees as set forth in KRS 304.4-010.

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: November 14, 2000

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VOLUME 27, NUMBER 6 – DECEMBER 1, 2000

FILED WITH LRC: November 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 2 p.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, 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. Anyone who does not wish to be heard at the public hearing, may submit written comments on the proposed administrative regulation. 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: Suetta W. Dickinson, Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602-0517, (502) 564-6075.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suetta W. Dickinson

(1) Provide a brief summary of:
   (a) What this administrative regulation does: All individuals applying for an agent license (except for a limited line of authority) and all individuals applying for a rental vehicle managing employee license must complete a prelicensing course of study. This administrative regulation sets forth the requirements for those courses as well as the procedures for qualifying the instructors teaching those courses.
   (b) The necessity of this administrative regulation: This administrative rule is necessary to clarify the department’s procedures in implementing KRS 304.9-105, as amended, and the new requirements of 2000 Ky. Acts ch. 380, Section 24, which require prelicensing training prior to the issuance of an agent license or a rental vehicle managing employee license.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The related statutes require that certain applicants complete a prelicensing course of study as a qualification for licensure. This administrative regulation clarifies how courses must be filed with the department for approval and the subject matter that must be included in a prelicensing course.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation will inform all prospective applicants and all prospective instructors of the department’s procedures regarding approval of prelicensing courses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This administrative regulation will require that the rental vehicle managing employees’ prelicensing course have the department’s prior approval, just as all other prelicensing courses; and specify that applicants for limited lines of authority as identified in KRS 304.9-230 are not required to complete any prelicensing training.
   (b) The necessity of the amendment to this administrative regulation: These amendments are needed to address requirements for the new licenses created by 2000 HB 354 and 2000 HB 595.
   (c) How the amendment conforms to the content of the authorizing statute: The related statutes require that certain applicants complete a prelicensing course of study as a qualification for licensure. This administrative regulation clarifies how these courses must be filed with the department for approval and the subject matter that must be included in a prelicensing course.
   (d) How the amendment will assist in the effective administration of the statute: This administrative regulation will inform all prospective applicants and all prospective instructors of the department’s procedures regarding approval of prelicensing courses.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all individuals applying for an agent license (except for a limited line of authority) or a rental vehicle managing employee license.
   (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: For individual applicants for an agent license, there will be no new or additional impact. (Prior to July 14, 2000, KRS 304.9-105 required all individual agent applicants, except for limited lines of authority, to complete 40 hours of prelicensing training. Further, KRS 304.9-105 exempted limited lines of authority from any prelicensing training.) The rental vehicle managing employee license is a new license type created through the enactment of HB 354 by the 2000 General Assembly. These applicants will be required to complete a prelicensing training course offered by the rental vehicle agent and approved by the department.
   (5) Provide an estimate of how much it will cost to implement this administrative regulation:
      (a) Initially: There will be no cost impact to implement this administrative regulation.
      (b) On a continuing basis: There will be no cost impact 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: The funding source will be the budget of the Kentucky Department of Insurance.
   (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The department does not anticipate an increase in fees or funding to implement this administrative regulation.
   (8) State whether or not this administrative regulation establishes any fees or directly increases any fees: No.
   (9) TIERING: Is tiering applied? Yes, agents with full lines of authority are required to complete 40 hours of prelicensing training in order to be properly trained to sell insurance. Agents with limited lines of authority for certain kinds of insurance (motor vehicle physical damage, common carrier, credit, crop hail, and mechanical breakdown) are not required to have specific prelicensing training to sell these kinds of insurance. Specific training is not required for limited lines of authority because these kinds of insurance are usually simpler products offered incidentally to some other transaction on a take-it-or-leave-it basis and offered without needing much explanation to consumers.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Agent Licensing

Amendment

805 KAR 9:070. Examinations [Examination retake limits].

RELATES TO: KRS 304.9-105, 304.9-160, 304.9-190, 304.9-230, 304.9-320, 304.9-430, 304.15-700, 304.32-180

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-160, 304.9-230, 304.15-700, 304.32-250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate [make reasonable rules and] administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-162 provides that examinations required by Subtitle 9 shall be developed and conducted in accordance with administrative regulations promulgated by the commissioner. KRS 304.9-230 provides that the commissioner shall promulgate administrative regulations regarding the examinations for limited lines of authority. KRS 304.15-700 provides that the commissioner may promulgate administrative regulations regarding the examinations of viatical brokers. KRS 304.32-250 provides that the commissioner may promulgate reasonable administrative regulations that he deems necessary for the proper administration of KRS Chapter 304 Subtitle 9. This administrative regulation reasonably restricts the number of times an applicant for an agent's, a viatical broker's [relicenter's], a consultant's, or an adjuster's license may take the appropriate examination required by the Kentucky Insurance Code or administrative regulations promulgated thereunder, sets a minimum score for successful completion of a written licensing examination, and sets a period for which examination scores are valid.

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Section 1. As used in this administrative regulation:
(1) "Examination" means written examinations required to license applicants in accordance with KRS Chapter 304 for adjuster, agent, consultant, and viatical broker licenses.
(2) "License" means a document issued by the commissioner indicating that an applicant for adjuster, agent, consultant, or viatical broker license has complied with applicable requirements of KRS Chapter 304.

Section 2. A completed written application for the examination and all other documents specified by the commissioner shall be filed with the commissioner by, or on behalf of, the applicant, prior to the date scheduled for the examination, and shall be accompanied by all fees specified in KRS 304.4.010 or administrative regulations promulgated thereunder.

Section 3. Every applicant for a license who is required to take a written examination must answer correctly seventy (70) percent of the questions to successfully pass the examination.

Section 4. Applicants to take the examinations required by KRS Chapter 304 [304.9-160, 304.9-230, and 806-KAR-9-030] shall be permitted to take or retake an examination a combined total of three (3) times within 120 days of the receipt [submission] of an application by the commissioner. All applicable fees, as set out in KRS 304.4.010 and administrative regulations promulgated thereunder, shall be submitted with the request to retake the examination. The request shall be made on a form prescribed by the commissioner.

Section 5. (1) The provisions of this administrative regulation shall apply to all individual resident applicants for limited lines of authority as identified in KRS 304.9-230.
(2) Applicants for limited lines of authority as identified in KRS 304.9-230 shall successfully complete examinations as follows:
   (a) For motor vehicle physical damage limited line of authority, a vehicle physical damage examination;
   (b) For common carrier limited line of authority, a common carrier examination;
   (c) For mechanical breakdown limited line of authority, a mechanical breakdown examination;
   (d) For crop hail limited line of authority, a crop hail examination; and
   (e) For limited lines credit limited line of authority, no examination is required.

Section 6. (2) If an applicant to take the examinations required by KRS Chapter 304 [304.9-160, 304.9-320, and 806-KAR-9-030] does not take an examination or fails to pass an examination within 120 days of the filing of his application, the [said] application shall become invalid, unless the commissioner grants an extension for good cause shown. The applicant may file a new application at any time following the expiration of the 120 day period, and an examination may be taken when scheduled by the department in the regular course of business.

Section 7. Examination results are valid for one (1) year from the date the examination is taken. Application for additional lines of authority or licenses issued as a result of the same examination must be received by the commissioner within the same one (1) year period. After this period, the applicant must be retested.

GEORGE NICHOLS, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 2 p.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, 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. Anyone who does not wish to be heard at the public hearing, may submit written comments on the proposed administrative regulation. 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: Suetta W. Dickinson, Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602-0517, (502) 564-6075.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suetta W. Dickinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: All individuals applying for an agent license, an adjuster license, a consultant license, or a viatical broker license must successfully complete the appropriate examinations. This regulation sets forth the procedures for those examinations, the examinations for limited lines of authority, the number of times the applicant may take the examinations, the minimum passing score, and the period an examination score is valid.
(b) The necessity of this administrative regulation: This regulation is necessary to clarify the department's procedures in implementing KRS 304.9-105, 304.9-160, 304.9-230, and 304.9-430, as amended; KRS 304.9-320 and 304.32-183, not amended in 2000, and the new requirements of KRS 304.15-700, which together require the successful completion of examinations prior to the issuance of an agent, adjuster, consultant, or viatical broker license.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The related statutes require that applicants successfully complete an examination as a qualification for licensure. This regulation clarifies the procedures and standards for successful completion of examination.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will inform all prospective applicants for these licenses of the department's procedures and standards regarding the successful completion of examination.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This regulation will remove all reference to the discontinued "soliciot" license; clarify that it applies to examinations taken by agents, adjusters, consultants, and viatical brokers; count the 120 day time limit for taking and retaking an examination from the date the application is received by the department; specify which examinations an applicant must take for a limited line of authority for motor vehicle physical damage, common carrier, mechanical breakdown, and crop hail; specify that applicants for "limited line credit" line of authority are exempt from examination; and specify that examination scores are only valid for one year.
   (b) The necessity of the amendment to this administrative regulation: These amendments are needed to specify the procedures and standards to be applied to examinations.
   (c) How the amendment conforms to the content of the authorizing statute: The related statutes require that certain applicants successfully complete examinations as a qualification for licensure. This regulation clarifies the procedures and standards regarding examinations.
   (d) How the amendment will assist in the effective administration of the statute: This administrative regulation will inform all prospective applicants for these licenses of the department's procedures and standards regarding examinations.
   (3) List the type and number of individuals, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all individual applicants for an agent, adjuster, consultant, or viatical broker license.
   (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: All applicants will have a few more days in which to take their examinations as the 120 day time limit will be counted from the date the application is received by the department rather than the date it is submitted by the applicant. Applicants for "limited line credit" line of authority will not be required to
take an examination as a requirement for licensure.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no cost impact to implement this administrative regulation.
(b) On a continuing basis: There will be no cost impact 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: The funding source will be the budget of the Kentucky Department of Insurance.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: The Department does not anticipate an increase in fees or funding to implement this administrative 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? Yes. Adjusters, consultants, viatical brokers, and most agents are required to successfully complete an examination before licensure. In addition, all applicants for limited lines of authority are required to take an examination except for limited lines credit. Examination is not required for limited lines credit applicants because, prior to July 14, 2000, agents were not required to take an examination in order to sell most of the insurance products sold under a limited lines credit line of authority. Past laws that exempted agents selling credit insurance products from examination do not appear to have harmed either consumers or agents.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Agent Licensing
(Amendment)

RELATES TO: KRS 304.9:295, 304.15:700
STATUTORY AUTHORITY: KRS 304.2:110, 304.9:295, 304.15:700 [304:9295]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2:110 provides that the Commissioner of Insurance may promulgate [make reasonable] administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9:295 requires providers to certify completion of the continuing education course on a form prescribed by the commissioner, and it allows the commissioner to [provides that the Commissioner of Insurance may, by administrative regulation,] limit the number of [excess credit] continuing education credit] hours carried forward to the subsequent [accumulated during any continuing education] biennium. KRS 304.15:700 provides that the commissioner shall promulgate administrative regulations that are necessary for the licensing of viatical settlement brokers. This administrative regulation establishes procedures for approval of agent and viatical settlement broker continuing education courses [programs] and obtaining credit for attending continuing education courses [programs].

Section 1. Definition. As used in this administrative regulation:
[Definitions: (1) “Commissioner” means the Commissioner of the Kentucky Department of Insurance; and
(2) “Provider” means the sponsor of a continuing education course [program].

Section 2. Continuing Education Course [Program] Requirements.
(1) [Prior to] A continuing education course [program shall not qualify for use as continuing education credit unless it is filed with and approved by the commissioner: if the continuing education program is or will be advertised as having been approved by the commissioner, it shall be filed with and approved by the commissioner at least sixty (60) days in advance of advertising unless the commissioner, in his sole discretion, waives the sixty (60) day period.

(b) Any material change in a continuing education program previously filed with and approved by the commissioner shall not be imple-
Section 5. [40-S] Proof of Completion. (1) Within thirty (30) days of completion of a continuing education course [program], the provider shall certify to the commissioner the names of all licensees [agents or solicitors] who satisfactorily completed the continuing education course [program]. The certification of completion required by this section shall be in the form prescribed by the commissioner.

(2) [The certificate of completion shall be completed in triplicate for each agent or solicitor attending. The original shall be mailed by the provider to the department within thirty (30) days after the continuing education course is completed. The department shall accept only originals.] The provider of the continuing education course [program] shall furnish to the licensee [agent or solicitor] attending the course [program] a copy of the certificate and the licensee [agent or solicitor] shall retain a copy of the certificate for at least three (3) years. The certificate required by this subsection shall be in the form prescribed by the commissioner. The provider of the continuing education course [program] shall retain a copy of the certificate for at least three (3) years. Providers of continuing education courses and licensees [agents or solicitors] shall make available to the commissioner or his designee copies of these certificates upon the request of the commissioner.

(3) Pursuant to KRS 304.9-285(b), every licensee [agent] shall be responsible for ensuring [reseeing] that his or her continuing education certificates of completion are timely filed with the department.

(4) At least six (6) hours of total credit earned per biennium must be directly related to any one (1) or more of the lines of authority for which the agent is actively licensed. At least two (2) hours of total credit earned per biennium must be in ethics. Hours may be classroom, correspondence, or a combination of both.

(5) Each correspondence course shall require successful completion of a written examination or the submission of a statement by the licensee made under oath that the course was completed within the biennium.

(6) Licensees may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

[Section 5: Gerry Forward of Excess Credit Hours. Agents or solicitors may carry forward credit hours of excess of twenty-four (24) hours from a previous continuing education biennium. The number of excess credit hours carried forward pursuant to this section shall be limited to twelve (12).]

Section 6. [List of Approved Continuing Education Programs. The commissioner shall provide, upon written request accompanied by a fee of five (5) dollars pursuant to KRS 4-916, a list of all continuing education programs which the commissioner has approved and the providers of those programs]

Section 7. Cancellation and Reinstatement of Licenses. (1) If the department does not receive proof of the fulfillment of a licensee's [an agent's] continuing education requirements for a resident licensee on or before July 30 in even numbered years, and for a nonresident licensee before July 30 in odd-numbered years, the commissioner shall terminate the license. [Pursuant to the agent's license. The commissioner shall notify a licensee and the licensee's sponsoring agent or insurer of cancellation of license for failure to comply with continuing education requirements. The notice shall be in writing and mailed to the resident address of the licensee on file with the commissioner and if that notice is returned as undeliverable the notice shall be sent to the]
Section 7. Affidavit for Exemption from Continuing Education. (1) Use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any other reason, including an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-235 and shall subject the applicant to suspension or revocation of the agent license.

(2) An agent exempted from continuing education requirements on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions may not claim any continuing education exemption and may have any restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

(a) Completing the continuing education requirements for the immediate preceding continuing education biennium;

(b) Providing a certification of completion of those continuing education requirements; and

(c) Providing a signed, written statement withdrawing the affidavit.

Section 8. Limited lines of authority as identified in KRS 304.9-230 shall not be exempt from all continuing education requirements. [Reinstatement of prior license or issuance of a new license shall be granted only after the licensee has satisfied the continuing education requirement for which the license is delinquent, caused to be filed the appropriate certificate of completion, filed the required application or appointment for a license; and has paid the required licensing fee.]

GEORGE NICHOLS III, Commissioner
RONALD B. McOLOUD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 5 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 2 p.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five workdays prior to the hearing, of their intention to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Anyone who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Anyone who does not wish to be heard at the public hearing, may submit written comments on the proposed administrative regulation. 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: Sueta W. Dickinson, Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602-0517, (502) 564-6075.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sueta W. Dickinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures of the Kentucky Department of Insurance related to continuing education for individual agents including the process for filing a continuing education course for approval by the department, the qualifications for course approval, the method of calculating the number of credit hours assigned to each approved course, the reasons for approval or disapproval, the procedures to show proof of course completion, the number of continuing education hours required for each licensee, and the penalties for failure to meet the continuing education requirements. Further, this administrative regulation sets out the procedure for agents to withdraw affidavits for exemption from continuing education requirements. Finally, this administrative regulation also specifies that agents with limited lines of authority as identified in KRS 304.9-230 are exempt from all continuing education requirements.

(b) The necessity of this administrative regulation: This regulation is necessary to clarify the department's procedures in implementing KRS 304.9-295, as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The related statutes require that individual agent licensees complete continuing education in order to maintain their license. This regulation clarifies how the department will ensure compliance with this statute by setting forth the process for course approval, the method to ensure that licensees are credited for the courses they complete, and the penalties for failing to meet this statutory requirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will inform all licensees, providers, and instructors of continuing education of the department's procedures regarding continuing education.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation will: delete the definition of "commissioner" because KRS 304.1-050 and this definition is redundant; Remove the term "solicitor" because the license has been discontinued by 2000 Ky. Acts ch. 393; clarify the procedures for continuing education by grouping the information in a more logical manner; prohibit giving credit for the same continuing education course more than once in a continuing education biennium; clarify which specific statutorily approved professional courses are exempt from the limit of 12 hours; require at least 6 hours of continuing education directly related to 1 or more lines of authority for which the licensee is actively licensed, and at least 2 hours of ethics; set out the procedure for agents to withdraw their affidavits, which exempt them from continuing education requirements; and specify that limited lines authority identified in KRS 304.9-230 are exempt from all continuing education requirements.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to comply with the changes the 2000 General Assembly enacted through HB 875.

(c) How the amendment conforms to the content of the authorizing statute: The related statutes require that individual agent licensees (except those with limited lines of authority) complete continuing education in order to maintain their license. This regulation clarifies how the department will ensure compliance with this statute by setting forth the process for course approval, the method to ensure that licensees are credited for the courses they complete, and the penalties for failing to meet this statutory requirement.

(d) How the amendment will assist in the effective administration of the statute: This regulation will inform all licensees and providers of continuing education of the department's procedures regarding continuing education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all individual licensed agents (except those with limited lines of authority) as well as providers and instructors of continuing education courses.

(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: The individual licensed agents who are required to complete 24 hours of continuing education every two years must now complete at least 6 hours of courses relevant to their active lines of authority and 2 hours of ethics. However, agents who are not required to complete continuing education to maintain their limited lines of authority) Providers and instructors may more easily determine what the procedures are for filing, approval, and renewal of continuing education courses.

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

(a) Initially: There will be no cost impact to implement this regula-
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(continued)

(b) On a continuing basis: There will be no cost impact to implement this regulation.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation provides that the fees required for approval of continuing education courses shall be specified in KRS Chapter 304 Subtitle 4. (These fees remain the same as they have been since 1995 or before.)

(9) TIERING: Is tiering applied? Yes. Agents with full lines of authority are required to complete 24 hours of continuing education each biennium. Agents with limited lines of authority to sell insurance identified as motor vehicle physical damage, common carrier, credit, crop-hail, and mechanical breakdown are not required to complete continuing education. Continuing education is not required for limited lines of authority because these lines of insurance are usually simpler products offered incidentally to some other transaction on a take-it-or-leave-it basis and offered without needing much explanation to consumers.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(1 Amendment)

808 KAR 17:220. Approval criteria and requirements for reentry into the Kentucky health insurance market.

RELATES TO: KRS 304.17A-260, 42 USC 300gg sec. 2742
STATUTORY AUTHORITY: KRS 304.2-110(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the insurance code. KRS 304.17A-260 provides that an insurer that, on or after July 15, 1999, until April 10, 1999, issued standard health benefit plans under KRS 304.17A-160 and then ceased doing business in Kentucky, may apply to the commissioner on or after July 14, 2000, until April 1, 2001, for approval to reenter the Kentucky market. The Commissioner of Insurance is required to either approve or disapprove an insurer’s request to reenter the Kentucky market. This administrative regulation is necessary to assist the commissioner in his decision to approve or disapprove the insurer’s request to reenter the Kentucky market. This administrative regulation is also necessary to assure that the market reentry provisions in KRS 304.17A-260 conform to the market reentry provisions in 42 USC 300gg, sec. 2742.

Section 1. Application to Reenter. [Request for Amnesty.] Each insurer wishing to apply for approval to reenter this state to engage in health insurance business in accordance with KRS 304.17A-260, [sec. 4] shall provide the following to the Commissioner of Insurance:

(1) A copy of the original notice from the insurer to the department notifying the department of the insurer’s withdrawal from the health insurance market;

(2) A statement identifying and describing any existing health benefit plan being renewed but not currently marketed in Kentucky and indicating if [describing] the health benefit plan is offered in the following markets [by stating whether the plan is]:

(a) Individual;
(b) Small group;
(c) Large group; or
(d) Association;

(3) A statement identifying and describing any proposed health benefit plan to be marketed in Kentucky and if the health benefit plan will be offered in the following markets:

(a) Individual;
(b) Small group;
(c) Large group; or
(d) Association: [A statement identifying in which of the following markets the insurer intends to participate:]

(e) Individual;
(f) Guaranteed Acceptance Program;
(g) Small group;
(h) Large group; or
(i) Association.

(4) If the insurer will be utilizing a network:

(a) [A description of the service area in which it proposes to market; and]
(b) The proposed provider directory or plan for contracting with providers;

(5) A description of the system for the marketing and sale of each health benefit plan [method of distribution for each product that will be marketed];

(6) A statement indicating the anticipated date for marketing new health benefit plans; and

(7) A copy of the insurer’s audited financial statement for the three years prior to the insurer’s request for reentry;

(8) Copies of the two (2) most recent market conduct reports that are final;

(9) A statement identifying whether the insurer’s certificate of authority has been revoked or suspended in any state since it left the Kentucky market; and if so:

(a) The name of the state agency revoking or suspending the insurer’s certificate of authority;
(b) The date of the revocation or suspension;
(c) The date, if any, of the reactivation of the certificate of authority; and
(d) The reasons given by the revoking or suspending state agency for the revocation or suspension;

(10) A statement identifying each fine over $ 10,000 the insurer has received since it left the Kentucky market, and if so:

(a) The name of the state agency issuing the fine;
(b) The date of the fine;
(c) The amount of the fine; and
(d) The reasons given by the state agency for the fine; and

(11) A statement of intent to reenter the market within six (6) months of the commissioner’s approval of reentry. [amnesty]

Section 2. (1) An insurer’s anticipated date for marketing new plans shall not be more than ninety (90) days after the insurer’s request for reentry into the health insurance market.

(2) Prior to the expiration of the ninety (90) day period in subsection (1) of this section, the insurer shall file the following with the Department of Insurance:

(a) Rates for each product to be marketed;
(b) Each form that will be utilized for each product; and
(c) An affidavit from an officer of the company attesting to the fact that the company will be actively marketing each product for which rates and forms were filed with the department.

(3) The receipt by the Department of Insurance of a request for amnesty shall toll the deadline for returning to the health insurance market provided that all information required pursuant to Section 1 of this administrative regulation is received by the department within two (2) weeks of the date the request for amnesty is received.


(a) The commissioner has not received all information required by Section 1 of this administrative regulation; and

(b) The insurer is prohibited by 42 USC 300gg, sec. 2742 from reentering the health insurance market in this state; and

(c) A current financial review has not been completed by the department.

(2) The commissioner shall notify each insurer, in writing, of the decision to approve or disapprove the insurer’s reentry [request-for
amnesty) pursuant to KRS 304.17A-260 [1999-Ky. Acts ch. 496, sec. 8].

(3) The commissioner shall condition approval based upon an insurer’s reentry into the health benefit plan market in this state within six (6) months from the date of approval.

(d) An insurer shall market a health benefit plan in this state within six (6) months from the date of approval of reentry or the insurer’s approval for reentry shall be null and void.

GEORGE NICHOLS III, Commissioner

RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: November 14, 2000
FILED WITH LSC: November 14, 2000 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 2000, at 3 p.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2000, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. If you do not wish to be heard at this hearing, you may submit written comments on the proposed administrative regulation. 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: Charlette K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, ext. 293, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Charlette K. Hummel, Counsel

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the requirements for insurers who on or after July 15, 1995 until April 10, 1998 issued standard health benefit plans under KRS 304.17A-260 and thereafter ceased doing business in Kentucky, to reenter the Kentucky health insurance market.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assist the commissioner in his decision to approve or disapprove the insurer’s request to reenter the Kentucky health insurance market. This administrative regulation is also necessary to assure that the market reentry provision in KRS 304.17A-20 conform to the market reentry provision in 42 USC 300gg, sec 2742.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes approval criteria and requirements for reentry into the Kentucky health insurance market pursuant to KRS 304.17A-260.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to assist the commissioner in his decision to approve or disapprove the insurer’s request to reenter the Kentucky market. This administrative regulation establishes approval criteria and requirements for reentry into the Kentucky health insurance market pursuant to KRS 304.17A-260.

(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 to the existing regulation allows insurers who, on or after July 15, 1995, until April 10, 1998, issued standard health benefit plans under KRS 304.17A-260 and thereafter ceased doing business in Kentucky, may apply to the commissioner on or after July 14, 2000 to April 1, 2001 for approval to reenter the Kentucky health insurance market. This amendment also requires an applicant seeking to reenter the Kentucky health insurance market to provide the commissioner the following additional information: (1) copies of the two most recent market conduct reports that are final; (2) a statement identifying whether the insurer’s certificate of authority has been revoked or suspended in any state since it left the Kentucky market; (3) a statement identifying each line over $10,000 the insurer has received since it left the Kentucky market; and (4) a statement of intent to reenter the market within 6 months upon approval to reenter.

(b) The necessity of the amendment to this administrative regulation: The amendment permits qualified insurers to continue to apply for reentry. If the amendment was not made, no insurer could apply, as the application period had expired under the old regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment of the regulation further clarifies how a qualified insurer applies for reentry into the Kentucky health insurance market.

(d) How the amendment will assist in the effective administration of the statutes: The amendment of the regulation further clarifies how a qualified insurer applies for reentry into the Kentucky health insurance market and aids the commissioner in approving or disapproving an insurer’s request to reenter the market.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all insurers seeking approval to reenter the Kentucky market to engage in health insurance business pursuant to KAR 304.17A-260.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment permits qualified insurers to continue to apply for reentry. If the amendment was not made, no insurers could apply, as the application period had expired under the old regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Because this is an amendment of an existing regulation, the department anticipates that this administrative regulation will have little, if any, effect upon the existing costs of complying.

(b) On a continuing basis: The department anticipates that the costs of compliance with this administrative regulation will remain the same for the second and subsequent years.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The department does not anticipate any increase in fees or funding will be necessary as a result of this amendment to the administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers that, on or after July 15, 1995, until April 10, 1998, issued standard health benefit plans under KRS 304.17A-260 and ther ceased doing business in Kentucky, who apply to the Commissioner of Insurance for approval to reenter the Kentucky market.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Adoption)

2005 KAR 030: Kentucky no-fault rejection form.

RELATES TO: KRS 304.39-060
STATUTORY AUTHORITY: KRS 304.2-110, 304.39-300
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.39-060 requires the Department of Insurance to prescribe a form whereby any person may reject limitations on his tort rights and liabilities. This administrative regulation prescribes such form and its use.

Section 1. Any person may refuse to consent to the limitation of his tort rights and liabilities by filing with the Department of Insurance a
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Kentucky No-Fault Rejection Form which is made a part of this administrative regulation, NF-1(a)(b)(c) P&C (900) which is incorporated by reference in this administrative regulation. The Kentucky No-Fault Rejection Form shall contain an advisory providing information as to no-fault benefits and the effects of rejection, so each person may make an informed decision as to rejecting no-fault benefits. [Ky. NF-1(a)(b)(c) P&C (900), see Appendix A.]

Section 2. Members of the same household may indicate their rejections on the same form, but each individual must execute the form on his own behalf unless he is under legal disability. The policyholder must send the original and one (1) copy of the form to the Department of Insurance. Upon receipt of the properly completed forms, the Department of Insurance will stamp the copy with the date filed and return it to the policyholder for his or her records. A rejection is effective upon filing with the Department of Insurance and remains effective unless revoked by submission of revocation of the rejection on the form made a part of this administrative regulation, or is superseded by the filing of a subsequent rejection form.

Section 3. Where a guardian or committee has been appointed for a person under a legal disability, in order to reject, the guardian or committee must execute the rejection on behalf of the ward. A rejection for a minor under eighteen (18) years of age must be executed by a parent, if there is no guardian or committee. A rejection executed by a parent or guardian is valid only so long as the individual is under legal disability.

Section 4. A rejection for a minor under eighteen (18) years of age must be executed by a parent, if there is no guardian or committee.

Section 5. A rejection is effective upon receipt by the Department of Insurance, and remains effective for five (5) years from the date unless revoked by submission of such revocation of the rejection on the form made a part of this administrative regulation, or is superseded by the filing of a subsequent rejection form. The Department of Insurance shall maintain sufficient data to assure its capacity to notify each person who has rejected limitations on his tort rights and liabilities sixty (60) days prior to the expiration of the most current rejection.

Section 6. Each policyholder of an automobile liability insurance policy must send to his insurance company a copy of any rejection form filed with the Department of Insurance, involving any member of his household who is not himself a policyholder.

Section 5. Material Incorporated by Reference. This administrative regulation incorporates Ky. NF-1(a)(b)(c) P&C, “Kentucky No-Fault Rejection Form” (900/00) edition, Department of Insurance. This material may be inspected, copied or obtained at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This form may also be obtained at the Department of Insurance website: www.doi.state.ky.us.

[KENTUCKY NO-FAULT REJECTION FORM]

ACCEPTANCE OF NO-FAULT INSURANCE DENIES THE APPLICANT THE RIGHT TO SUE A NEGLIGENCE MOTORIST UNLESS CERTAIN REQUIREMENTS CONTAINED IN THE POLICY OF INSURANCE ARE MET. YOU AND ANY MEMBER OF YOUR HOUSEHOLD CAN RETAIN THE RIGHT TO SUE AND GIVE UP THE NO-FAULT BENEFITS BY COMPLETING THIS FORM AND MAILING IT TO THE DEPARTMENT OF INSURANCE, FRANKFORT, KENTUCKY 40601.

DO NOT COMPLETE THIS FORM IF ALL MEMBERS OF THE HOUSEHOLD WANT TO ACCEPT BENEFIT OF THE NO-FAULT LAW IN RETURN FOR GIVING UP SOME RIGHTS TO SUE.

Any member of the household who does not accept the No-Fault benefits, must complete this form.

The policyholder and the following members of this household have decided on the OPTION NUMBER entered in the block by their name. Each member of the household has a choice.

OPTIONS—Indicate option selection number in the blank next to your name:

☑ 1. I want to keep my right to sue or be sued so I reject my No-Fault benefits.
☑ 2. I accept my No-Fault benefits but other members of the household want to keep their right to sue or to be sued.
☒ 3. As to my ownership and operation of motorcycles, I want to keep my right to sue or be sued so I reject my No-Fault benefits.
☒ 4. I previously rejected my No-Fault benefits and I want to cancel that rejection.

POLICYHOLDER AND OTHER MEMBERS OF THE HOUSEHOLD OPTION SELECTION

Policyholder Name (Type/Print):
Soc. Sec. No.:
Birthdate:
Signature:
Policyholder Name (Type/Print):
Soc. Sec. No.:
Birthdate:
Signature (Person, Parent, Guardian):
Policyholder Name (Type/Print):
Soc. Sec. No.:
Birthdate:
Signature (Person, Parent, Guardian):
Policyholder Name (Type/Print):
Soc. Sec. No.:
Birthdate:
Signature (Person, Parent, Guardian):
Address: Street or Route:
City, County, Zip Code:
Insurance Company:
Policy No.:
Date Signed:

NOTE: MAILING INSTRUCTIONS
1. White copy to be mailed to Kentucky Department of Insurance.
2. Yellow copy to be mailed to your insurance company.
3. Pink copy to be mailed to your insurance agent.
4. Gold copy to be kept for your records.

Ky. NF-1(7-76)

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 10 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Vicky Horn, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, ext. 234, FAX: (502) 564-1456.
(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 amendment to an administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fee directly, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering does not apply because this amendment to 806 KAR 39:030 will apply equally to all consumers and carriers of motor vehicle insurance in the Commonwealth.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Amendment)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.210 to 230.380
STATUTORY AUTHORITY: KRS 230.250

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey who never previously has ridden in a race may be permitted to 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; and
(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; and
(3) The starter has schooled the person 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; and
(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.
(5) Section 1. A person shall not ride in any probationary races without prior approval of the stewards.

Section 2. Qualifications for License. In addition to the administrative regulations applicable to licensees under 810 KAR 1:003, 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;
(4) Shall, when required by the stewards, 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. An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, shall be approved by the stewards as to competency of horsemanship, shall be granted an amateur jockey's license, and his amateur status shall be duly noted on the daily race program. 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. Any person sixteen (16) years of age or older, who never previously has been licensed 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:

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(1) Ten (10) pounds until he has ridden five (5) winners, and seven (7) pounds until he has ridden an additional thirty-five (35) winners; 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. 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 from the date of the fifth winning mount, or until the 40th winning mount.

(2) After the completion of conditions in subsection (1) of this section a contracted apprentice for one (1) year may claim three (3) pounds when riding horses owned or trained by his original contract employer; provided, his contract has not been transferred or sold since his first winner. The original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey's first winner. No apprentice allowances may 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.

(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. These contracts shall be:

(a) Approved by the stewards;
(b)Filed with the racing commission; and
(c)Binding in all respects on the parties to the contract;
(d) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate, on a form furnished by the commission.

(4) 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, or restrictions on racing, or other valid reason the commission upon recommendation of the stewards and after consultation with the racing authority 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. All contracts between an employer owner or trainer and employee rider shall be subject to the administrative regulations promulgated by the Kentucky Racing Commission. All riding contracts for terms longer than thirty (30) days, as well as any amendments, cancellation, or transfer, shall be in writing with signature of parties notarized, and shall be approved by the stewards and filed with the commission. The stewards may approve a riding contract and permit parties to participate in racing in this state if the stewards find that:

(1) 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 execution of the contract;
(2) The contract employer possesses the character, ability, facilities, and financial responsibility as may be conducive to developing a competent race rider;
(3) The contracts for apprentice jockeys provide 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 date of execution.

Section 6. Restrictions as to Contract Riders. No rider may:

(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;
(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. Any rider not so prohibited by prior contract may agree to give first or second call on his race-winning services to any licensed owner or trainer. These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the commission. Any rider employed by a racing stable on a regular salaried basis may not ride against the stable which so employs him. No owner or trainer shall employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The purpose of this section is not to establish a minimum or maximum fee, but merely to provide a fee if the parties have not made any other agreement to the contrary. The fee for a jockey shall be, in the absence of special agreement, as follows:

(a) Purse $2,000 to $3,400: Winning mount, ten (10) percent of win purse; Second mount, $45; Third mount, $35; Losing mount, $30.
(b) Purse $3,500 to $4,900: Winning mount, ten (10) percent of win purse; Second mount, $55; Third mount, $45; Losing mount, $35.
(c) Purse $5,000 to $9,900: Winning mount, ten (10) percent of win purse; Second mount, $65; Third mount, $50; Losing mount, $40.
(d) Purse, $10,000 to $14,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $45.
(e) Purse, $15,000 to $24,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $50.
(f) Purse, $25,000 to $49,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $60.
(g) Purse, $50,000 to $99,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $75.
(h) Purse, $100,000 and up: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $100.

(2) A jockey fee shall be considered earned by a rider when he is weighed out by the clerk of scales except:

(a) When 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) When a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, proper cause.
(c) When 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 racing 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. No rider shall 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; and upon arrival shall report to the clerk of scales his engagements. If a rider should fail for any reason to arrive in the jockey room prior to 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. No rider shall have contact or communication with any person outside the jockey room 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 so as to exclude all persons except riders scheduled to ride on the day's program, valers, 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 hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and at the time of weighing out shall declare overweight, if any. (2) No rider shall 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; in no event shall a rider pass the scale with more than five (5) pounds overweight. (3) No horse shall be disqualified because of overweight carried. (4) Whip, blinkers, number cloth, bridle, goggles, and rider's safety helmet shall not be included in a rider's weight.

Section 13. Wagering. No rider shall 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 such wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. 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. Each jockey shall wear the cap and jacket racing colors registered in the name of the owner of the horse he is to ride, stock tie, white or light breeches, top boots, safety helmet that meets the standards of the American Society for Testing and Materials (ASTM) F1163-00 [approved by the commission], and a number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program. Advertising, promotional, or cartoon symbols or wording which in the opinion of the commission are not in keeping with the traditions of the turf are prohibited. [Beginning January 1, 1996] Each jockey or jockey apprentice shall wear in all races a safety vest which shall meet the standards of the American Society for Testing and Materials (ASTM) F1937-98 [provide a minimum of shock protection to the upper body of a five (5) rating as defined by the British Equestrian Trade Association]. A safety vest shall weigh no more than two (2) pounds and shall not be included in the jockey's weight when weighing out to race. The clerk of scales and attending vet shall be held jointly responsible for a rider for his neat and clean appearance and proper attire.

Section 15. Viewing Films or Tapes of Races. Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race. The posting of the film list shall be considered as notice to all riders whose names are listed to present themselves at the time designated by the stewards to view the patrol films or video tapes of races. 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 16. Material Incorporated by Reference. (1) The following documents are incorporated by reference: (a) "Standard Specification for Protective Headgear Used in Horse Sport and Horseback Riding, January 10, 2000." (b) "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, November 1998." [2 This material may be inspected, copied, or obtained at the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

C. FRANK SHOPP, Chairman
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 27, 2000, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington. Individuals interested in being heard at this hearing shall notify this agency in writing by December 18, 2000, five 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation.


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rena Elswick
(1) Narrative summary of: (a) What the administrative regulation does: This administrative regulation establishes the requirements and conditions for racing associations. (b) The necessity of the administrative regulation: This administrative regulation provides guidelines for which the racing associations govern their race meets. (c) How the administrative regulation conforms to the content of the authorizing statutes: By prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices. (d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation gives exact guidelines for governing the race tracks from maintenance of the grounds, track lighting, purse monies, to the running of the races. (2) If this is an amendment of an existing administrative regulation, a brief narrative summary of: (a) How the amendment will change the existing administrative regulation: This amendment will require all jockeys and apprentice jockeys to wear a safety helmet and safety vest that meets the product standard established by the American Society of Testing and Materials. (b) The necessity of the amendment of the administrative regulation: This amendment is necessary in order to provide a level of safety for all jockeys and apprentice jockeys. (c) How the amendment conforms to the content of the authorizing statutes: According to KRS 230.225(1) the Kentucky Racing Commission was created to regulate the conduct of horse racing and pari-mutuel wagering on horse racing within the Commonwealth. (d) How the amendment will assist in the effective administration of the statutes: By requiring all jockeys and apprentice jockeys to wear a protective helmet and safety vest that meets the standards put forth by the Kentucky Racing Commission provides a level of safety for all involved. (3) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: All licensed jockeys and apprentice jockeys would be affected by this amended regulation. (4) An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if
new, or by the change if it is an amendment to an existing administrative regulation: The only impact will be all jockeys and apprentice jockey will have to wear a proposed helmet and safety vest.

(5) An estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: None
   (b) On a continuing basis: None
   (c) The source of the funding to be used for the implementation and enforcement of the administrative regulation: None
   (d) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation: None
   (e) A statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation will not increase any license fees.

(9) TIERING: Is tiering applied? Tiering was not applied. The licensees affected by this amended regulation will be responsible for obtaining this helmet and safety vest.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Amendment)

610 KAR 1:026. Racing associations.

RELATES TO: KRS 230.215(2), 230.225(1), 230.260(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.225(1), and 230.260(3) require the commission to promulgate administrative regulations establishing conditions governing horse racing. 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 exercised, 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, Totalizers Required. An association shall provide and maintain mechanically operated totalizers 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) Prior to the opening of a race meeting, the racing 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.
   (3) 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 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 for 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 heat-on and side-angle views of the running of each race.
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 ground from being injured by being frightened or tempered with.
(3) An association shall exclude from the paddock area, race strip, and wearer'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) An association shall for probable cause eject or exclude from association grounds a person:
(a) Believed to be engaged in:
1. A bookmaking activity; or
2. Solicitation of bets; or
3. Touting.
(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.
(c) Who as a business or for compensation, either directly or indirectly:
1. Accepted any thing of value to be wagered, or transmitted, or delivered for wager to a par-mutual wagering enterprise; or
2. Participated in the transaction; and
(d) Attempted to use tax exempt admissions credentials not issued to him by the association.
(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 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:
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 510 KAR 1:025, Section 6(2), 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.

(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. Horsemans's Account and Horsemans's Bookkeeper.
(1) An association shall maintain a bank account that shall:
(a) Be separate from its other accounts;
(b) Entitled"horsemans's account";
(c) Contain sufficient funds to pay money owing to horsemans for:
1. Purse;
2. Stakes;
3. Rewards;
4. Claims; and
5. Deposits.
(2) Withdrawals from the horsemans's account shall be subject to audit by the commission at any time.
(3)(a) Except as provided by paragraph (b) of this subsection, purse money shall be available to earners with 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 horsemans's bookkeeper in charge of the horsemans'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 horsemans's bookkeeper in charge of the horsemans's account shall be bonded.

Section 29. Outsiders. (1) An association shall employ at least two 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 protective helmet and a safety vest that meet the "Standard Specification for Protective Headgear Used in Horse Sports and Horseback Riding, January 10, 2000", and the "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, November 1998", respectively. (approved for use in racing by a racing trade association.)

Section 30. 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 31. 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 32. 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 33. 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 34. (1) Exculpatory clauses. Effective January 1, 1997, agreements including but not limited to stall applications, entry forms and condition books between persons or entities licensed by the Kentucky Racing Commission regarding the stability 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:
(a) Ordinary negligence which causes or contributes to loss, injury or damage to horses while on the premises of a 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 the licensed association. Subject to the above exceptions, 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. No licensee shall attempt to limit liability of any person or entity for gross negligence or intentional wrongdoing.

(2) Constructive notice of and consent of licensees. All persons licensed by the Kentucky Racing Commission shall be deemed, as a condition of licensure, to have notice of and to have consented to excumulatory 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. Excumulatory 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 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 such 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 and employees, the condition of the premises of the (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 35. Material Incorporated by Reference. (1) The following documents are incorporated by reference:

(a) "Standard Specification for Protective Headgear Used in Horse Sports and Horseback Riding, January 10, 2000";

(b) "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, November 1998".

(2) This material may be inspected, copied, or obtained at the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

O. FRANK SHOOP, Chairman
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 27, 2000, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 18, 2000, five 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation.


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rena Elswick

(1) Narrative summary of:

(a) What the administrative regulation does: This administrative regulation establishes the requirements and conditions for racing associations.

(b) The necessity of the administrative regulation: This administrative regulation provides guidelines for which the racing associations govern their race meets.

(c) How the administrative regulation conforms to the content of the authorizing statutes: By prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices.

(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation gives exact guidelines for governing the race tracks from maintenance of the grounds, track lighting, purses, monies, to the running of the races.

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

(a) How the amendment will change the existing administrative regulation: This amendment will require anyone exercising a horse during training hours, or accompanying a horse to the starting gate during racing hours to wear a safety helmet that meets the product standard established by the American Society of Testing and Materials.

(b) The necessity of the amendment of the administrative regulation: This amendment is necessary in order to provide a level of safety for all exercise riders.

(c) How the amendment conforms to the content of the authorizing statutes: According to KRS 230.225(1) the Kentucky Racing Commission was created to regulate the conduct of horse racing and pari-mutual wagering on horse racing within the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: By requiring all exercise riders to wear a protective helmet that meets the standards put forth by the Kentucky Racing Commission provides a level of safety for all involved.

(3) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: All individuals that exercise a horse during training hours or accompanies a horse to the starting gate during racing hours on a thoroughbred track would be affected. Approximately 3,400 individuals are licensed annually, and would be affected.

(4) An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation: The only impact will be that anyone exercising a horse or leading a horse to the gate during the races will have to wear the proposed helmet.

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

(a) Initially: None

(b) On a continuing basis: None

(6) The source of the funding to be used for the implementation and enforcement of the administrative regulation: None

(7) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation: None

(8) A statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation will not increase any license fees.

(9) TIERING: Is tiering applied? Tiering was not applied. The licensees affected by this amended regulation will be responsible for obtaining this helmet.
PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Amendment)

810 KAR 1:027. Entries, subscriptions, and declarations.

RELATES TO: KRS 230.210 et seq.
STATUTORY AUTHORITY: KRS 230.260

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to establish requirements for entry, subscription and declaration of thoroughbred horses in order to race.

Section 1. Definitions. (1) "Declaration" means the withdrawal of a horse from a race, before closing, by the owner, trainer, or person authorized by either.
(2) "Scratch" means withdrawal of a horse entered from a race, after closing, by the owner, trainer, or person authorized by either.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been and continues to be duly entered in a race. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries. (1) All entries, subscriptions, declarations, and scratches shall be filed with the racing secretary and shall not be considered as having been made until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of same for a period of one (1) year.
(2) An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary under these administrative regulations and made by the owner, trainer, or a licensed authorized agent of the owner or trainer.
(3) An entry shall be in writing or by telephone to the racing secretary. Telephone entries shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.
(4) An entry shall clearly designate the horse entered. When entered for the first time during a meeting, every horse shall be designated by name, age, color, sex, sire, and dam as reflected by its registration certificate.
(a) A horse shall not race, unless correctly identified to the satisfaction of the stewards as being a horse duly entered.
(b) Establishing identity of a horse shall be the responsibility of its owner and of any other person seeking to certify the identity of the horse. Persons shall be subject to appropriate disciplinary action for incorrect identification.
(c) Horses requiring the use of medication, drugs or substances to prevent exercise induced pulmonary hemorrhaging (EIPH)/bleeding, shall be registered with the commission veterinarian. Horses so registered shall remain, and removal shall require commission veterinarian approval. After inclusion, additional notification shall not be required. Horses which are not properly registered shall not be permitted to race with antiepine mediations, drugs, or substances. Registration shall be made prior to entry. The racing program will indicate usage.
(5) Alterations, except an error corrected with the permission of the stewards, shall not be made in an entry after the closing of entries.
(6) A horse shall not be entered in two (2) races to run on the same day.
(7)(a) A horse which has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1) published work out within twenty (20) days of entry to the stewards of the meeting.
(b) A horse starting for the first time shall not be permitted to start unless it has three (3) published workouts, one (1) of which is from the starting gate, and one (1) which is within twenty (20) days of entry.
(c) If a horse has done the requisite workout, but through no fault of the trainer, the workout does not appear in the past performances, it shall be permitted to start and the correct workout shall be publicly displayed on the bulletin boards where photo finishes are shown at least fifteen (15) minutes prior to the first race and for the duration of the day's racing.
(d) The workouts shall be displayed on the television monitors and tote board for fifteen (15) minutes prior to the first race.
(e) A horse which has never started shall not be entered until the trainer has produced satisfactory evidence to indicate to the starter that it has been adequately schooled from the starting gate.

Section 4. Stabling Requirement. Entries shall not be accepted for any horse not stabled on association grounds where the race is to be run, unless its stabling elsewhere has been approved by the commission in its approved off-track stable list.

Section 5. Limitation as to Spouses. Entries in a race shall not be accepted for a horse owned wholly or in part by, or trained by, a person whose spouse is under license suspension at the time of the entry. If the license of a jockey has been suspended for a routine riding offense, the stewards may waive the application of this section as to the duly licensed spouse of the suspended jockey.

Section 6. Mutuel Entries. (1) Horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and single betting interest, except as provided in subsections (6) and (7) [subsection (5)] of this section.
(2) Horses entered in the same race and owned wholly, or in part by the same owner or spouse, shall be joined as a mutuel entry and single betting interest, except as provided in subsection (7) of this section.
(3) No more than two (2) horses having common ties through ownership or training to be joined as a mutuel entry shall be entered in a purse race. When making a double entry of horses owned wholly, or in part by the same owner or spouse, a preference for one (1) of the horses shall be made.
(4) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single interest. In purse races where the number of starters is limited to ten (10) or less, two (2) horses having common ties through training shall not start to the exclusion of a single entry.
(5) In thoroughbred stakes races with added money of $100,000 or more, permission may be granted by the stewards [commission] to uncouple mutuel entries of horses sharing common ties through training, which are owned by different owners.
(6) In allowance races, permission may be granted by the stewards [commission] to uncouple mutuel entries of horses sharing common ties through training, with different ownership.

(7) In thoroughbred stakes races with gross purses of $1,000,000 or more, permission may be granted by the stewards to uncouple mutuel entries of horses sharing common ties through training or ownership or both.

Section 7. Subscriptions. (1) Any subscriber to a stakes race may transfer or declare a subscription prior to closing.
(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.
(3) Death of a horse or a mistake in its entry when the horse is eligible, shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as otherwise stated in the conditions of a stakes race.
(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.
(5) If a horse is sold privately or sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended or otherwise disqualified by the commission in its approved off-track stable list.

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(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 8. Closings. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, provided the approval of a steward has been obtained.

(2) If the hour of closing is not specified for stakes races, subscriptions and declarations may be accepted until midnight of the day of closing provided, they are received in time for compliance with every other condition of the race.

(3) Entries which have closed shall be compiled without delay by the racing secretary and along with declarations, shall be posted.

Section 9. Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards, considering the safety of the horses and riders, and the distance from the start to the first turn, may be afforded a fair and equal start.

(2) At tracks measuring less than a mile in circumference, no more than ten (10) horses shall start in any race without consent of the stewards, and no more than twelve (12) horses shall start without approval of the commission.

(3) A claiming race in the printed condition book for which eight (8) or more horses representing different betting interests are entered shall be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered shall be run.

(4) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (3) of this section to be run, the association may cancel or declare off the race. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary not later than 1 p.m. the same day.

Section 10. Split or Divided Races. (1) If a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) When a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made, and in the absence of specific prohibition by the following conditions:

(a) Horses originally joined as a mutual entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates such coupling of horses is not to be uncoupled if the race is split.

(b) Division of entries in any split stakes race may be made according to age, or sex, or both.

(c) Entries for any split race not divided by any method provided for in an administrative regulation, shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

Section 11. Post Positions. Post positions for all races shall be determined by lot, drawn in the presence of those making the entries for the race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for the split race. The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two (2) or more horses joined as a single betting interest.

Section 12. Also-eligible List. (1) If the number of entries for a race exceeds the number of horses permitted to start, as provided by Section 9 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, a new drawing shall be taken as to horses on the also-eligible list. The starting and post position of horses drawn from the also-eligible list shall be determined by the sequency draw, unless otherwise stipulated in the published conditions of the race.

(3) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(4) If entries are closed two (2) racing days prior to the running of a race, a horse on an also-eligible list that has been drawn into a race as a starter for the succeeding day, shall not be permitted to run in the race for which it had been listed as also-eligible.

Section 13. Preferred List; Stars. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because they were eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(2) Preferences shall not be given to a horse otherwise eligible for a race if it also is entered for a race on the succeeding day.

Section 14. Arrears. Unless approved by the racing secretary, horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 15. Declarations. Declarations shall be made in the same form, time, and procedure as required for the making of entries. Declarations shall be irrevocable. A declaration fee shall not be required by any licensed association.

Section 16. Scratches. Scratches shall be irrevocable and shall be permitted under the following conditions:

(1)(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time up until fifteen (15) minutes prior to post time for the race preceding the stakes race by filing written notification of an intention to scratch with the racing secretary. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel managers and shall cause an announcement of same to be made.

(b) If a list of also-eligibles has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Thereafter, a horse shall not be excluded without a valid physical reason.

(2) A horse shall not be scratched from a purse race unless:

(a) The approval of the stewards has been obtained; and

(b) Intention to scratch has been filed in writing with the racing secretary, or his assistant, at or before the time conspicuously posted as "scratch time." A scratch of one (1) horse coupled in a mutuel entry in a purse race shall be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. If horses representing more than eight (8) betting interests in any other purse race, remain in after horses with physical excuses have been scratched, owners or trainers may be permitted at scratch time to scratch horses without physical excuses. Scratches down to respective minimum numbers for the races may be made. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) Entry of a horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted until the expiration of three (3) calendar days.
after it was scratched or excused.

Section 17. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form, Racing Times or such publication as the commission may deem appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign county, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

C. FRANK SHOOP, Chairman
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 27, 2000, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 16, 2000, five 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Rena Elswick
(1) Narrative summary of:
(a) What the administrative regulation does: This administrative regulation establishes requirements for entries, subscriptions, and declarations of thoroughbred horses in order to participate in a race.
(b) The necessity of the administrative regulation: There must be uniformity as to how trainers and owners can enter horses in races.
(c) How the administrative regulation conforms to the content of the authorizing statutes: Under KRS 230.260(3) the commission shall have authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a licensed horse race meeting shall be conducted in Kentucky.
(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: By establishing procedures to be used at all racetracks on how horses can be entered in races.
(2) If this is an amendment of an existing administrative regulation, a brief narrative summary of:
(a) How the amendment will change the existing administrative regulation: The proposed amendment will allow the stewards to uncouple mutuel entries of thoroughbred horses in stake races with gross purses of $1,000,000 or more.
(b) The necessity of the amendment of the administrative regulation: The uncoupling of interests would eliminate the patron's risk of having a long shot as a betting interest when the favorite in a race scratches.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.260(3) authorizes the commission to prescribe by administrative regulations the conditions under which horse racing at a horse race meeting shall be conducted.
(d) How the amendment will assist in the effective administration of the statutes: By authorizing the stewards to uncouple entries in major stakes races.
(3) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Members of the public who bet on horse races at the tracks and simulcast facilities, race tracks, horse owners, and trainers.
(4) An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation: Uncoupling of interests eliminate the patron's risk of having a long shot as the sole betting interest when the favorite coupled with a long shot as an entry is scratched.
(5) An estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) The source of the funding to be used for the implementation and enforcement of the administrative regulation: None
(7) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation: None
(8) A statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation will not increase any license fees.
(9) TIERING: Is tiering applied? Tiering was not applied. The only entities affected by the amendment is the betting public.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Amendment)

810 KAR 1:028. Disciplinary measures.
RELATES TO: KRS 230.210 et seq.
STATUTORY AUTHORITY: KRS 230.210
NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which racing shall be conducted in Kentucky. The function of this administrative regulation is to establish the disciplinary powers and duties of the stewards and commission.

Section 1. Definitions. "Steward" means a racing steward or racing judge.

Section 2. Disciplinary Measures by Stewards. Upon the finding of a violation of these administrative regulations, or an attempted violation, on association grounds during the conduct of a meeting at which the stewards have been appointed to serve, the stewards may:
(1) Declare ineligible for racing or disqualify in a race any thoroughbred as provided for under 810 KAR 1:012 and 1:016. Declare ineligible for racing or disqualify any licensed person in violation of 810 KAR 1:025, Section 5 or in violation of any other administrative regulation contained in Chapter 810 or 811 of the Kentucky Administrative Regulations;
(2) Suspend the license of any person involved in a violation of an administrative regulation for a period of time not less than five (5) nor greater than five (5) years [more than 365 days] as may be deemed appropriate by the stewards in keeping with the seriousness of the violation;
(3) Cause any person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of, the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing, to be excluded or ejected from association grounds or any portion of association grounds; and
(4) In the case of a license suspension, the stewards may fix in the alternative a forfeiture not to exceed $5,000 [$1,000], which sum the licensee may, if he so chooses, pay to the commission in lieu of such imposed license suspension.

Section 3. Disciplinary Measures by Commission. Upon the finding of a violation of these administrative regulations or an attempted violation on any association grounds during the conduct of a race meeting in the Commonwealth, the commission may:
(1) Declare ineligible for racing or disqualify in a race any thoroughbred or any licensed person found to be in violation of 810 KAR 1:025, Section 5 or in violation of any other administrative regulation contained in Chapter 810 or 811 of the Kentucky Administrative Regulations;
(2) Deny, suspend, revoke, or declare void the license of any person involved in a violation of an administrative regulation for a
period of time not less than five (5) days nor greater than five (5) years [more than 365 days] as may deemed appropriate by the commission in keeping with the seriousness of the violation;

(3) The commission may eject or exclude persons from association with the commission or deny them the right to attend meetings of the commission or any of its committees for a period of time as may be determined by the commission;

(4) In the case of a license suspension or revocation, the commission may set a forfeiture in any amount, which the licensee may pay to the commission in lieu of the license suspension or revocation. The forfeitures paid to the commission in lieu of shall not accrue to the personal benefit of any commissioner or steward.

C. FRANK SHOOP, Chairman
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 27, 2000, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall be notified in writing by December 18, 2000, five days prior to the hearing, of their right to attend. If no notice of intent to attend the hearing is received by that date, the hearing may be conducted. 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rena Elswick

(1) Narrative summary of the administrative regulation does: This administrative regulation establishes the disciplinary powers and duties of the stewards and the commission.

(2) The necessity of the administrative regulation: Establishes specific penalties that will be imposed by the stewards and the commission.

(3) How the administrative regulation conforms to the content of the authorizing statutes: Under KRS 230.320(1) the commission has the authority to deny, suspend, or revoke any license for violation of its statutes or administrative regulations.

(4) How the administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes the limits of penalties that will be imposed by the stewards and the commission.

(5) If this is an amendment of an existing administrative regulation, a brief narrative summary of:

(a) How the amendment will change the existing administrative regulation: The proposed amended changes will allow the stewards to impose stiffer fines and will also allow the commission to deny, suspend, revoke, or declare void a license for a period of greater than a year.

(b) The necessity of the amendment: By imposing severe penalties will help the commission will maintain the highest standards of racing.

(c) How the amendment conforms to the content of the authorizing statutes: Under KRS 230.320 the commission has unlimited authority to deny, suspend, or revoke any license for violation of any of its statutes or administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: By establishing sanctions that are in line with the current level of racing taking place in Kentucky.

(4) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Any licensee of the commission that would violate any administrative regulation in Title 810 of the administrative regulations would be affected.

An assessment of the extent to which the group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation: Anyone licensed by the commission found to be in violation of any administrative regulation would be subject to the more severe penalties.

An estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) The source of the funding to be used for the implementation and enforcement of the administrative regulation: None

(7) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation: None

(8) A statement as to whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation will not increase any license fees.

(9) TIERING: Is tiering applied? Tiering was not applied. All affected individuals will have the option of paying a proposed increased fine in lieu of a suspended license.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(3) 811 KAR 1:075. Racing and track rules.

RELATES TO: KRS 230.630(1), (3), 230.640
STATUTORY AUTHORITY: KRS 230.630(3), (4), (7)
NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate racing, track rules and proper conduct.

Section 1. Although a leading horse is entitled to any part of the track, except after selecting his position in the home stretch, neither the driver of the first horse or any other driver in the race shall do any of the following things, which shall be considered violation of driving rules:

(1) Change either to the right or left during any part of the race when another horse is so near him that in altering his position he compels the horse behind him to shorten his stride, or causes the driver of such other horse to pull him out of his stride.

(2) Jostle, strike, hook wheels, or interfere with another horse or driver.

(3) Cross sharply in front of a horse or cross over in front of a field of horses in a reckless manner, endangering other drivers.

(4) Swove in and out or pull up quickly.

(5) Crowd a horse or driver by "pulling a wheel under him."

(6) "Carry a horse out" or "sit down in front of him," take up abruptly in front of other horses so as to cause confusion or interference among the trailing horses, or do any other act which constitutes what is popularly known as helping.

(7) Let a horse pass inside negligently.

(8) Laying off a normal pace and leaving a hole when it is well within the horse's capacity to keep the hole closed.

(9) Commit any act which shall impede the progress of another horse or cause him to "break."

(10) Change course after selecting a position in the home stretch and swove in or out, or bear in or out, in such manner as to interfere with another horse or cause him to change course or take back.

(11) To drive in a careless or reckless manner.

(12) Whipping under the arch of the sulky, the penalty for which shall be no more than ten (10) days suspension.
(13) Crossing the inside limits of the course.

(14) Drivers must set or maintain a pace comparable to the class in which they are racing. Failure to do so by going an excessively slow quarter or any other distance that changes the normal pattern, overall timing, or general outcome of the race will be considered a violation of this section and the judges may impose a penalty which can be a fine, suspension, or both.

Section 2. If at a racetrack which has pylon demarcations, a horse or the horses sulky leaves the course by brushing, running over and/or going inside of the pylons that horse may be penalized by a disqualification in the opinion of the judges, the action:
(a) Give the horse an unfair advantage over other horses in the race; or
(b) Helped the horse improve its position in the race.

(2) Horses using the inside to pass must have complete clearance of the pylons.

(3) Drivers striking pylons but not gaining an unfair advantage may be fined.

(4) When an act of interference causes a horse or part of the horses' sulky to be in violation of these rules and the horse is disqualified, the offending horse shall be placed behind the horse with which it interfered.

Section 3. Complaints, Reports of Interference. (1) Complaints. All complaints by drivers of any foul driving or other misconduct during the heat must be made at the termination of the heat, unless the driver is prevented from doing so by an accident or injury. Any driver desiring to enter a claim of foul or other complaint of violation of the rules, must before dismounting indicate to the judges or barrier judge his desire to enter such claim or complaint and forthwith upon dismounting shall proceed to the telephone or judges' stand where and when such claim, objection, or complaint shall be entered and considered.

(2) Report of interference. It is the duty of every driver to report to the official designated for such purpose as promptly after the conclusion of a race in which he has participated as possible, any material interference to himself or his horse by another horse or driver during a race.

Section 4. (3) If any of the above violations are committed by a person driving a horse coupled as an entry in the betting, the judges shall set both horses back if, in their opinion, the violation may have affected the finish of the race. Otherwise, penalties may be applied individually to the drivers of any entry.

Section 5. (4) In case of interference, collision, or violation of any of the above restrictions, the offending horse may be placed back one (1) or more positions in that heat or dash, and in the event such collision or interference prevents any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings; and the driver may be fined not to exceed the amount of the purse or stake contended for, or may be suspended or expelled. In the event a horse is set back, under the provisions hereof, he must be placed behind the horse with whom he interfered.

Section 6. (5) Unsatisfactory Drive; Fraud. (1) Every heat in a race must be contested by every horse in the race and every horse must be driven to the finish. If the judges believe that a horse is being driven, or has been driven, with design to prevent his winning a heat or dash which he was evidently able to win, or is being raced in an inconsistent manner, or to perpetrate or to aid a fraud, they shall consider it a violation and the driver and anyone in concert with him, to so affect the outcome of the race or races, may be fined, suspended or expelled. The judges may substitute a competent and reliable driver at any time. The substitute driver shall be paid at the discretion of the judges and the fee retained from the purse money due the horse, if any.

(2) In the event a drive is unsatisfactory due to lack of effort or carelessness, and the judges believe that there is no fraud, gross carelessness, or a deliberate inconsistent drive they may impose a penalty under this subsection not to exceed ten (10) days suspension or a $100 fine.

Section 7. (6) In the opinion of the judges, a driver is for any reason unfit or incompetent to drive or refuses to comply with the directions of the judges, or is reckless in his conduct and endangers the safety of horses or other drivers in the race, he may be removed and another driver substituted at any time after the positions have been assigned in a race, and the offending driver shall be fined, suspended or expelled. The substitute driver shall be properly compensated.

Section 8. (7) If, for any cause other than being interfered with or broken equipment, a horse fails to finish after starting in a heat, that horse shall be ruled out.

Section 9. (8) Loud shouting or other improper conduct is forbidden in a race. After the word "go" is given, both feet must be kept in the stirrups until after the finish of the race.

Section 10. (9) Drivers will be allowed whips not to exceed four (4) feet eight (8) inches, plus a snapper not longer than eight (8) inches.

Section 11. (10) The use of any goading device, chain, or mechanical devices or appliances, other than the ordinary whip or crop upon any horse in any race shall constitute a violation of this rule.

Section 12. (11) The brutal use of a whip or crop or excessive or indiscriminate use of the whip or crop shall be considered a violation and shall be punished by a fine of not to exceed $100 or suspension. A driver may use a whip only in the conventional manner. Whips, cuts, or whip marks on a horse resulting from whipping shall constitute a prima facie violation of this section. Drivers are prohibited from whipping under the arch of the sulky, kicking, punching or jabbing a horse, or using the whip so as to interfere with or cause disturbance to any other horse or driver in a race. Violation of this rule shall be punished by a fine not to exceed $100 or suspension. The penalty for kicking a horse shall be a five (5) day suspension for the first offense and ten (10) days for each offense thereafter.

Section 13. (12) No horse shall wear hopples in a race unless he starts in the same in the first heat, and having so started, he shall continue to wear them to the finish of the race, and any person found guilty of removing or altering a horse's hopples during a race, or between races, for the purpose of fraud, shall be suspended or expelled. Any horse habitually wearing hopples shall not be permitted to start in a race without them except by permission of the judges. Any horse habitually racing free-legged shall not be permitted to wear hopples in a race except with the permission of the judges. No horse shall be permitted to wear a head pole protruding more than ten (10) inches beyond its nose.

Section 14. (13) Breaking. (1) When any horse or horses break from their gait in trotting or pacing, their drivers shall at once where clearance exists, take such horse to the outside and pull it to its gait.

(2) The following shall be considered violation of subsection (1) of this section:
(a) Failure to properly attempt to pull the horse to its gait.
(b) Failure to take to the outside where clearance exists.
(c) Failure to lose ground by the break.
(3) If there has been no failure on the part of the driver in complying with subsection (2) of this section, the horse shall not be set back unless a contending horse on his gait is lapped on the hind quarter of the breaking horse at the finish.
(4) If in the opinion of the judges a horse or driver's actions causes another horse to be off-stride at the wire, the offending horse shall be placed behind the horse interfered with after any or all other resulting placings.
(5) Any horse making a break, which causes interference with other contesting horses, shall be placed behind any or all offended horses.
(6) The judges may set any horse back one (1) or more places if, in their judgment, any of the above violations have been committed.
Section 15. [14:] If, in the opinion of the judges, a driver allows his horse to break for the purpose of fraudulently losing a heat, he shall be liable to the penalties elsewhere provided for fraud and fouls.

Section 16. [15:] To assist in determining the matters contained in Sections 13 and 14 of this administrative regulation, it shall be the duty of one (1) of the judges to call out every break made, and the clerk shall at once note the break and character of it in writing.

Section 17. [16:] The time between separate heats of a single race shall be no less than forty (40) minutes. No heat shall be called after sunset where the track is not lighted for night racing. The time between races shall not exceed thirty (30) minutes.

Section 18. [17:] Horses called for a race shall have the exclusive right of the course, and all other horses shall vacate the track at once, unless permitted to remain by the judges.

Section 19. Should any horse in the current program fail or get loose on the track or be involved in an accident of any kind after starting to warm up, that horse will only be permitted to start after examination and approval by the commission veterinarian.

Section 20. [18:] In the case of accidents, only so much time shall be allowed as the judges may deem necessary and proper.

Section 21. [19:] A driver must be mounted in his sulky at the finish of the race or the horse must be placed as not finishing.

Section 22. [20:] It shall be the responsibility of the owner and trainer to provide every sulky used in a race with unicolored or colorless wheel discs on the inside and outside of the wheel of a type approved by the commission. In his discretion, the presiding judge may order the use of mud guards.

Section 23. [21:] Sulky. Only sulks of the conventional dual-shaft and dual-hitch type as hereinafter described shall be permitted to be used in any races. A conventional type sulky is one having two (2) shafts which must be parallel to, and securely hitched on each side of the horse. No point of hitch or any part of a shaft shall be above a horizontal level equal to the lowest point of the horse’s back.

Section 24. [22:] Repeated Violations. Repeated rule violations shall be considered grounds for refusal to grant or grounds for revocation of any driver’s license.

Section 25. [23:] Any violation of any sections of this administrative regulation, unless otherwise provided, may be punished by a fine or suspension, or both, or by expulsion.

C. FRANK SHOOP, Chairman
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 27, 2000, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 18, 2000, five 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation.


REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rena Elswick

1. Narrative summary:
(a) What the administrative regulation does: This administrative regulation regulates racing, track rules, and proper conduct.
(b) The necessity of the administrative regulation: This administrative regulation sets forth the guidelines on which a horse is driven in a standardbred race.
(c) How the administrative regulation conforms to the content of the authorizing statutes: Under KRS 230.330(1)(3)(4)(7) and 230.640 the commission has full authority to prescribe rules, regulations, and conditions under which standardbred racing shall be conducted.
(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation spells out what is acceptable and what will result in a penalty with the driving of a horse in a standardbred race.

2. If this is an amendment of an existing administrative regulation, a brief narrative summary of:
(a) How the amendment will change the existing administrative regulation: Many standardbred tracks are now replacing their hub rails and installing pylons. The proposed changes deal with horses that may interfere with the pylons during a race.
(b) The necessity of the amendment of the administrative regulation: These proposed administrative changes define the possible penalties that can result if a standardbred horse races on the outside of the pylons or strikes a pylon.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.630(3) gives the commission authority to prescribe rules, regulations, and conditions under which standardbred horse racing shall be conducted.
(d) How the amendment will assist in the effective administration of the statutes: It will provide the standardbred judges guidelines on which to determine if a horse and driver has caused an infraction.

3. (a) The type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: All standardbred horses and drivers who race at a Kentucky track that has pylons will be affected.
(b) An assessment of how the proposed changes will impact by either the implementation of this administrative regulation, if new, or by the change if it is an amendment to an existing administrative regulation: The groups involved shouldn’t be impacted. Most standardbred race tracks across the nation currently have pylons.
(c) An estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: None
   (b) On a continuing basis: None
   (c) The source of the funding to be used for the implementation and enforcement of the administrative regulation: None

4. (a) An assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment to an existing administrative regulation: None
(b) A statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation will not increase any license fees.
(c) TIERING: Is tiering applied? Tiering was not applied. The only entities affected by the amendment will be the drivers and horses participating in standardbred racing.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(Amendment)

901 KAR 5:050. Fees for searches, certified copies of certificates and records.

RELATES TO: KRS 213.141

NECESSITY, FUNCTION, AND CONFORMITY: KRS 213.141 directs the Cabinet for Health Services [Human Resources] to set a
reasonable fee by administrative regulation for searches or for copies of the record of any birth, death, marriage or divorce.

Section 1. Fees for Searches and, Certified Copies of Certificates and Records. The following fees shall be charged for searches for and copies of records registered with the State Registrar of Vital Statistics, Cabinet for Health Services [Human Resources]:

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RICE C. LEACH, M.D., Commissioner
JIMMY D. HELTON, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held December 21, 2000, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 14, 2000. If no notice 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 the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street, 4-W-C, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sandy Davis

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets the fees for search and certified copies of vital event records, birth, death certificates.
(b) The necessity of this administrative regulation: HB 202 passed in the 200 general assembly required an increase in the birth certificate fee.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This fee is conform with KRS 213.141, which directs the cabinet to set fees for search and certified copies.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment keeps the cabinet in compliance with HB 202 as enacted and contributes general fund dollars to the metabolic food supplement program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will raise the fee for searches and copies of certified of birth certificates $1.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to HB 202.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment is within the requirements of the authorizing statute.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the fee to be set as required by law and to administer the fee collection.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All citizens purchasing a birth certificate will be affected by this regulation.
(f) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: All individuals purchasing a birth certificate will be required to pay $1 more.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: minimal for efforts to notify individuals and groups.
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing state 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: This amendment increases fees $1 with the money directed to the metabolic food supplement program. No part of this increase will be retained by Vital Statistics.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment increases search and certified copy fees by $1.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(AMENDMENT)


RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 CFR 150.20

STATUTORY AUTHORITY: KRS 138.170, 194A.050, 211.090, 211.842

NECESSITY, FUNCTION, AND CONFORMITY: [The Cabinet for Human Resources is authorized by] KRS 211.844 requires the Cabinet for Health Services to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides for the reciprocal recognition of radioactive material licenses issued by the United States Nuclear Regulatory Commission or another Agreement State.

Section 1. [Applicability: This administrative regulation apply to persons who possess, use or transfer radioactive material in Kentucky as authorized in a license issued by the United States Nuclear Regulatory Commission or another Agreement State:]

Section-2: Reciprocal Recognition of Licenses. (1) Subject to 902 KAR Chapter 100 [these administrative regulations], a person who holds a specific license from the United States Nuclear Regulatory Commission or an Agreement State, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, shall be [be herein] granted a general license to conduct the activities authorized in the licensing document within the Commonwealth of Kentucky, except in areas of exclusive federal jurisdiction, for a period of 180 days in a calendar year if:
(a) The licensing document does not limit the activity authorized by the document to specified installations or locations;
(b)(1) The out-of-state licensee notifies the cabinet in writing at least three (3) days prior to engaging in the activity. The notification shall include:
(a) The date of arrival;
(b) The duration of use;
(c) The nature and scope of the use;
(d) The company where the radioactive material is to be used;
(e) The person in charge;
(f) The exact location and type of proposed possession within this
a. [shall be accompanied by] A copy of the pertinent licensing document.

2. If, for a specific case, the three (3) day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the cabinet, obtain permission to proceed sooner.

3. The cabinet may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in this section;

(c) The out-of-state licensee complies with 902 KAR Chapter 100 [all applicable administrative regulations of the cabinet] and with [all] the terms and conditions of his licensing document, except the terms and conditions which may be inconsistent with 902 KAR Chapter 100 [applicable administrative regulations of the cabinet];

(d) [Provided further that the cabinet may require] The out-of-state license supplies [to supply other] information as the cabinet may reasonably request;

(a) The licensee does not establish a permanent office in this state; and

(f) The out-of-state licensee does [shall not transfer or dispose of radioactive material possessed or used in accordance with] the general license provided in this section except by transfer to a person:

1. Specifically licensed by the cabinet or by the United States Nuclear Regulatory Commission to receive the material; or

2. Exempt from the requirements for a license for [the material specified in 902 KAR Chapter 100; and]

(g) The out-of-state license pays an annual fee in accordance with 902 KAR 100:012 [under these administrative regulations];

2. In addition to the provisions of subsection (1) of this section, a person who holds a specific license or equivalent licensing document issued by the United States Nuclear Regulatory Commission or an Agreement State authorizing the holder to manufacture, transfer, install or service a device described in 902 KAR 100:050, Section 3(3), relating to the general licensing of certain uses of radioactive material and specific devices containing radioactive material, or areas subject to the jurisdiction of the licensing body shall be [is hereby] granted a general license to install, transfer, demonstrate or service the device in the Commonwealth of Kentucky if:

(a) The person satisfies [shall satisfy] the requirements of 902 KAR Chapter 200 [these administrative regulations];

(b) The device has been manufactured, labeled, installed and serviced in accordance with applicable provisions of the specified license issued to the person by the United States Nuclear Regulatory Commission or an Agreement State;

(c) The person assures [shall assure] that labels required to be affixed to the device in accordance with [under] administrative regulations of the authority which licensed the manufacture of the device bears [bears] a statement that "removal of this label is prohibited;"

(d) The holder of the specific license furnishes [shall furnish] to a [each] general licensee to whom he transferred a device or on whose premises he installs a device a copy of the general license contained in 902 KAR 100:050, Section 3(3), relating to the general licensing of certain uses of radioactive materials and specific devices containing radioactive material; and

(e) The person files [shall file] a report with the cabinet within thirty (30) days after the end of a [each] calendar quarter in which a device is transferred to a person or installed in a location within the jurisdiction of the cabinet. A [Each] report shall identify a [each] general licensee to whom the a device is transferred by;

1. Name and address;

2. The type of device transferred; and

3. The quantity and type of radioactive material contained in the device.

3. The cabinet may withdraw, limit, or qualify its acceptance of a specific license or equivalent licensing document issued by another agency, or of a product distributed as authorized by a licensing document, upon determining that the action is necessary in order to prevent undue hazard to public health and safety and property.

RICE C. LEACH, M.D., Commissioner
JIMMY D. HELTON, Secretary
APPROVED BY AGENCY: November 14, 2000

FILED WITH LRC: November 15, 2000 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held December 21, 2000 at 9 a.m. in the Cabinet for Health Services Auditorium, 1st floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending, shall notify this agency in writing by December 14, 2000. If no notice 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. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John Volpe, Ph.D., 564-3700

1. Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides for the reciprocal recognition of radioactive material licensees issued by the U.S. Nuclear Regulatory Commission and Agreement States.

(b) The necessity of this administrative regulation: This regulation provides equivalent requirements to those of the U.S. Nuclear Regulatory Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide regulations for the licensing and registration of sources of radiation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides for obtaining recognition of a license issued by the U.S. Nuclear Regulatory Commission and other Agreement States.

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 clarification of the existing regulation by excluding areas of exclusive federal jurisdiction.

(b) The necessity of this amendment to this administrative regulation: This regulation provides equivalent requirements to those of the U.S. Nuclear Regulatory Commission.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.844 requires the cabinet to provide regulations for the licensing and registration of sources of radiation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation provides the requirements for obtaining recognition of a license issued by the U.S. Nuclear Regulatory Commission and other Agreement States.

3. List the number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 40 out-of-state radioactive material licensees request reciprocity annually.

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: This amendment clarifies the requirement for reciprocal recognition of other states' licenses by excluding areas of exclusive federal jurisdiction.

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

(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees from granting reciprocity to out-of-state radioactive material licensees.

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

8. State whether or not this administrative regulation establishes
any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, and 10 CFR 150.20 as promulgated by the U.S. Nuclear Regulatory Commission.


3. Minimum or uniform standards contained in the federal mandate. The amendment brings about compatibility with U.S. Nuclear Regulatory Commission's requirements.

4. Will this administrative regulation impose stiffer 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. Administrative regulation provides equivalent requirements for reciprocity as those of the U.S. Nuclear Regulatory Commission.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 100:100. Industrial radiography.

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 CFR 34, 71, 21 CFR 1020.40

STATUTORY AUTHORITY: KRS 13B.170, 194A.050, 211.090, 211.844[; 10 CFR 34, 71; 21 CFR 1020.40]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 requires [authorizes] the Cabinet for Health Services [Human Resources] to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides radiation safety requirements for industrial radiographic operations and shall apply [applies] to licensees or registrants who use sources of radiation for industrial radiography.

Section 1. Specific License and Registration Requirements for Industrial Radiography. (1) An application for a specific license or registration for the use of sources of radiation in industrial radiography shall be approved if the applicant meets the following requirements:

(a) The applicant shall satisfy the general requirements specified in 902 KAR 100:40, Section 4, or 902 KAR 100:110 and 902 KAR 100:146, and any special requirements contained in this administrative regulation.

(b) The applicant shall submit an adequate program for training a radiographer and a radiographers' assistant that meets the requirements of Section 14 of this administrative regulation.

1. After June 30, 2002, an applicant need not describe its initial training and examination program for a radiographer in the subjects outlined in Section 14 of this administrative regulation.

2. From June 30, 2002 to June 30, 2002, an applicant may affirm that an individual acting as an industrial radiographer shall be certified in radiation safety by a certifying entity, as described in 10 CFR Part 34, Appendix A, before commencing duty as a radiographer. This affirmation shall substitute for a description of its initial training and examination program for a radiographer in the subjects outlined in Section 14 of this administrative regulation.

(c) The applicant shall submit procedures for verifying and documenting the certification status of a radiographer and for ensuring that the certification of an individual acting as a radiographer remains valid.

(d) The applicant shall submit written operating and emergency procedures as described in Section 15 of this administrative regulation.

(e) The applicant shall submit a description of a program for inspections of the job performance of a radiographer and a radiography assistant at intervals not to exceed six (6) months as described in Section 14 of this administrative regulation.

(f) The applicant shall submit a description of the applicant's overall organization structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

(g) The applicant shall identify and list the qualifications of the individual designated as the radiation safety officer (RSO) and of the potential designees responsible for ensuring that the licensee's radiography safety program is implemented in accordance with approved procedures.

(h) If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant shall describe the procedures for performing and the qualifications of the person authorized to do the leak testing. If the applicant intends to analyze its own wipe samples, the application shall include a description of the procedures to be followed. The description shall include:

1. Instruments to be used;
2. Methods of performing the analysis; and
3. Pertinent experience of the person analyzing the wipe samples.

(i) If the applicant intends to perform an "in-house" calibration of a survey instrument, the applicant shall describe methods to be used and the relevant experience of the person performing the calibration. A calibration shall be performed according to the procedures described and at the intervals prescribed in Section 5 of this administrative regulation.

(j) The applicant shall identify and describe the location of all field stations and permanent radiographic installations.

(k) The applicant shall identify the location where records required by this administrative regulation and other administrative regulations in 902 KAR Chapter 100 shall be maintained.

(2) A licensee shall maintain a copy of its license, documents incorporated by reference, and amendments to these items until superseded by new documents approved by the cabinet, or until the cabinet terminates the license.

Section 2. Performance Provisions for Radiography Equipment. Equipment used in industrial radiographic operations shall meet the following criteria:


(b) Engineering analysis shall be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review, the cabinet determines that the engineering analysis demonstrates the actual testing of the component is not necessary, the cabinet shall find the engineering analysis to be an acceptable alternative.


(2)(a) A radiographic exposure device shall have attached to it by the user, a durable, legible, clearly visible label bearing the following:

1. Chemical symbol and mass number of the radionuclide in the device;
2. Activity and date on which this activity was last measured;
3. Model or product code, and serial number of the sealed source;
4. Manufacturer of the sealed source; and
5. Name, address, and telephone number of the licensee or registrant.
Section 4. [3] Locking of Radiographic Exposure Devices, Storage Containers, and Source Containers. (1) A radiographic exposure device shall have [Sources of Radiation] (1) Sources of radiation shall be provided with a lock or outer locked container designed to prevent unauthorized or accidental removal of radiation or removal or exposure of a sealed source from its shielded position.

(a) An exposure device or its container shall be kept locked, and if a key is lost, the key removed at all times except:
1. If under the direct surveillance of a radiographer or radiographer's assistant; or
2. As authorized by Section 10 [46] of this administrative regulation.

(b) During radiographic operation the sealed source assembly shall be secured in the shielded position, except the source in its shielded position.

(c) A sealed source [A] storage container and source changer shall be:
1. Provided with a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position; and
2. Kept locked (and if a key is lost, the key removed at all times) if containing sealed sources, except [if the container is] under the direct surveillance of a radiographer or radiographer's assistant. (2) The control panel of a radiation machine shall be:
   (a) Equipped with a lock that prevents the unauthorized use of an x-ray system or the accidental radiation; and
   (b) Kept locked and if the key removed at all times, except under the direct visual surveillance of a radiographer or radiographer's assistant. [Radiographic exposure devices, storage containers, and storage containers shall be locked and surveyed to assure that the sealed source is in the shielded position prior to being:
   (a) Moved from one (1) location to another; and
   (b) Secured at a given location.

Section 4, Storage Precautions. (1) Locked radiographic exposure devices, source changers, storage containers, and other sources of radiation, including radiation devices, shall be physically secured to prevent tampering or removal by unauthorized personnel.

(2) Radiographic exposure devices, source changers, and transport containers that contain radioactive material shall not be stored in residential locations; This provision shall not apply to storage of radioactive material in a vehicle that is in transit for regular use at temporary job sites.

(a) The licensee complies with subsection (3) of this section; and
(b) The vehicle is not a transport container that contains radioactive material.

(3) A storage or use location shall be considered permanent if:
   (a) Radioactive material is stored at the location for more than ninety (90) days; and
   (b) One (1) of the following applies to the location:
      1. Telephone service is supplied to the location.
      2. Industrial radiographic services are advertised to or from the location.

Section 5. Radiation Survey Instruments. (1) A licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments at a location where sources of radiation are present to make [physical] radiation surveys as required by this administrative regulation and 902 KAR 100:019, Section 12(1).

(2) A radiation survey instrument shall be calibrated:

(a) At energies appropriate for use;
(b) At intervals not to exceed six (6) [three (3)] months;
(c) [6] After an [each] instrument servicing, except for battery changes; [so that accuracy within plus-or-minus twenty (20) percent may be demonstrated];

(d) [1] At two (2) points located approximately one-third (1/3) and two-thirds (2/3) of full-scale for linear scale instruments; and
(e) Midrange of each decade, and at two (2) points of at least one (1) decade for logarithmic scale instruments; [and]

3. At three (3) points between two (2) and 1000 millirems (90.02 and ten (10) millivolts) per hour [if appropriate points] for digital instruments; and

(d) So that an accuracy within plus or minus twenty (20) percent of the calibration source can be demonstrated at the points checked.

3. Records of these calibrations shall be maintained for three (3) [two (2)] years after the calibration date for inspection by the cabinet.

4. Instrumentation required by this section shall have a range so that two (2) millirems (0.02 millivolts) [milliroentgens] per hour through one (1) rem (0.01 sievert) [roentgen] per hour may be measured.

5. A radiation survey instrument shall be checked with a radiation source at the beginning of each day of use and at the beginning of each work shift to ensure it is working properly.

Section 6. Leak Testing: [Repairing, Tagging, Opening, Modification] and Replacement of Sealed Sources. (1) The replacement of a sealed source fastened to or contained in a radiographic exposure device, and leak testing, repairing, tagging, opening, or [other] modification of a sealed source shall be performed [only] by persons specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission, or an Agreement State.

(2) A sealed source shall be tested for leakage:

(a) If taken or used after the calibration date and no test has been performed for leakage since that date;
(b) Upon use of the sealed source by a person other than the person who last used the source, and;[and]

(c) At the beginning of each work shift to ensure it is working properly.

3. The analysis shall be capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample and

4. The analysis shall be performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission or an agreement state to perform the analysis.

5. Unless a sealed source is accompanied by a certificate from the manufacturer that shows that it has been leak tested within six (6) months before the transfer, it shall not be used by the licensee until tested for leakage. Sealed sources that are in storage and not in use do not require leak testing, but shall be tested before use or transferring to a person if the interval of storage exceeds six (6) months.

6. A test conducted in accordance with subsections (1) and (2) of this section which reveals the presence of 0.005 microcuries (185 Bq) or more of removable radioactive material shall be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the equipment involved from use and shall have it decontaminated and repaired or disposed of in accordance with 902 KAR 100:021. A report shall be filed with the Manager, Radiation Health and Toxic Agents Branch, Department of Public Health, 275 East Main Street, Frankfort, Kentucky 40621, within five (5) days of a test with results that exceed the threshold in this subsection, describing the equipment involved, the test results, and the corrective action taken.

7. An exposure device using depleted uranium (DU) shielding and an "S" tube configuration shall be tested for DU contamination at intervals not to exceed twelve (12) months.

(a) The analysis shall be:

1. Capable of detecting the presence of 0.005 microcuries (185 Bq) of radioactive material on the test sample; and

2. Performed by a person specifically authorized by the cabinet, the U.S. Nuclear Regulatory Commission or an agreement state to perform the analysis.

(b) If such testing reveals the presence of 0.005 microcuries (185 Bq) or more of removable DU contamination, the exposure device shall be removed from use until an evaluation of the wear on the S-tube has been made.

(c) If the evaluation reveals that the S-tube is worn through, the device shall not be used again.

(d) DU shielded devices do not have to be tested for DU contamination while in storage and not in use.

2. Before using or transferring such a device however, the device shall be tested for DU contamination if the interval of storage exceeded twelve (12) months.

8. A licensee shall maintain records of leak test results for sealed sources and for devices containing DU. The results shall be stated in units of microcuries (becquerels). The licensee shall retain a record for three (3) years after it is made or until the source in storage is removed, and contamination pursuant to 902 KAR 100:060. Records of leak test results shall be maintained for inspection by the cabinet:

(a) For six (6) months after the next required leak test is performed;
(b) Until the sealed source is transferred or disposed;
(c) A sealed source not fastened to or contained in a radiographic exposure device shall have permanently attached to it a durable tag at least one (1) inch square bearing:

(e) The prescribed radiation caution symbol in conventional colors; magenta or purple on a yellow background; and

(b) At least the instructions: "Do not Handle—Notify Civic Authorities If Found."

Section 7. Quarterly Inventory. (1) A licensee or registrant shall conduct a quarterly physical inventory to account for all sources of radiation [sealed sources] and [radiography-exposure] devices containing depleted uranium received or possessed in accordance with the license [by-him].

(2) Records of the inventories shall be maintained for three (3) [two (2)] years from the date of the inventory for inspection by the cabinet. The records of inventories shall include:

(a) Radionuclide;
(b) Number of curies (becquerels) or mass (for DU) in a device;
(c) Quantities and kinds of radioactive material;
(b) Location of sealed sources and devices;
(d) [6] Date of the inventory;
(e) [6] Name of the individual making the inventory; and
(j) [6] Manufacturer, model number, serial number of sealed sources and [radiography exposure] devices, as appropriate.

Section 8. Utilization Logs. A licensee or registrant shall maintain utilization [current] logs, which shall be kept available for inspection by the cabinet for three (3) [two (2)] years from the date of the recorded event, at the address specified in the license or on the registration, showing for a each source of radiation the following information:

(1) A description including [for] make, [and] model and serial number(s) of the exposure device, radiation machine, or transport [each source of radiation] or storage container in which a sealed source is located;

(2) Identity and signature of the radiographer to whom assigned;

(3) Site or plant where used and dates of use; [and]

(4) Date a each source of radiation is removed from storage and returned to storage; and

(5) For permanent radiographic installations, the dates a radiation machine is energized.

Section 9. Inspection and Maintenance of Radiographic Exposure Devices, Radiation Machines, Transport and Storage Containers,
Associated Equipment, Source Changes, and Survey Instruments [and other Sources of Radiation]. (1) A licensee or registrant shall perform:

(a) Visual and operability checks on survey meters, radiographic exposure devices, radiation machines, transport and storage containers, associated equipment, and source changers before use on a day the equipment is to be used to ensure that the:

1. Equipment is in good working condition;
2. Source is adequately shielded; and
3. Required labeling is present; and

(b) An operability check of survey instruments using check sources or other appropriate means.

(2) If an equipment problem is found, the equipment shall be removed from service until repaired.

(3) A licensee or registrant shall have written procedures for:

(a) Inspection and routine maintenance of radiographic exposure devices, radiation machines, source changers, associated equipment, transport and storage containers, and survey instruments at intervals not to exceed three (3) months or before the first use thereafter to ensure the proper functioning of components important to safety;

(b) Inspection and maintenance necessary to maintain the Type B package used to transport radioactive materials.

(c) Inspection and maintenance program to assure that a Type B package is shipped and maintained in accordance with the certificate of compliance or other approval.

(d) Replacement components shall meet design specifications.

(4) If an equipment problem is found, the equipment shall be removed from service until repaired.

(5) Records of equipment problems found in daily checks and quarterly inspections of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments and of any maintenance performed in accordance with subsections (1) through (3) of this section shall be kept for three (3) years for inspection by the cabinet.

(b) The record shall include:

1. The date of check or inspection;
2. Name of the inspector;
3. Equipment involved;
4. Problems found; and
5. What repair and maintenance was done, [ensure that checks for obvious defects in radiation machines, radiographic exposure devices, storage containers, and source changers are performed prior to each day of use.]

(2) A licensee or registrant shall conduct a program for inspection and maintenance of radiation machines, radiographic exposure devices, storage containers, and source changers to assure proper functioning of components important to safety prior to the first use, and subsequently at intervals not to exceed three (3) months. Appropriate parts shall be maintained as specified by the manufacturer.

(3) If an inspection reveals damage to components critical to radiation safety, the device shall be:

(a) Removed from service; and
(b) Labeled as defective until repairs have been made;

(c) Records of inspection and maintenance shall be kept for two (2) years for inspection by the cabinet.

Section 10. Permanent Radiographic Installations. (1) Permanent radiographic installations with an entrance used for personnel access to a [having] high radiation area shall have:

(a) Entrance controls of the type described in 902 KAR 100:019, Sections 14(1)(b), (c), and (2) that reduces the radiation level upon entry into the area; or [shall also meet the following provisions];

(b) [1] The entrance used for personnel access to the high radiation area shall have] Both visible and audible warning signals to warn of the presence of radiation.

1. (a) The visible signal shall be activated by radiation if the source is exposed or the machine is energized.
2. (b) The audible signal shall be activated if an attempt is made to enter the installation while the source is exposed or the machine is energized.

(2a) [control device or] alarm system shall be tested for proper operation with a radiation source at the beginning of each day before the installation is used for radiographic operations [of equipment].

(b) The test shall include a check of the visible and audible signals.

(c) Entrance control devices that reduce the radiation level upon entry designated in subsection (1) of this section shall be tested monthly.

(3)(a) If an entry is [a control] device or alarm system is operating improperly, it shall be immediately labeled as defective and repaired within seven (7) calendar days [before industrial radiographic operations are resumed].

(b) The facility may continue to be used during this seven (7) day period. If the licensee implements the continuous surveillance requirements of Section 20 of this administrative regulation and uses an alarming ratemeter.

(d) Records of these tests for entrance control and audible and visual alarms shall be maintained for inspection by the cabinet for three (3) [two-to-two] years from the date of the test.

Section 11. Labeling, Storage and Transportation. (1) A licensee shall not use a source changer or a container to store radioactive material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional colors (magenta, purple or black on a yellow background, having a minimum diameter of twenty-five (25) millimeters), and the wording CAUTION RADIOACTIVE MATERIAL NOTIFY CIVIL AUTHORITIES (or "NAME OF COMPANY") or "DANGER.

(2) The licensees shall not transport radioactive material unless the material is packaged, and the package is labeled, marked and accompanied with appropriate shipping papers in accordance with 10 CFR Part 71.

(3) Locked radiographic exposure devices, radiation machines, and storage containers shall be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store radioactive material in a manner which minimize danger from explosion or fire.

(4) The licensee shall lock and physically secure the transport package containing radioactive material in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the radioactive material from the vehicle.

Section 12. Conducting Industrial Radiographic Operations. (1) A) If radiography is performed at a location other than a permanent radiographic installation, the radiographer shall be accompanied by at least one (1) other qualified radiographer or an individual who has at a minimum met the requirements of Section 14 of this administrative regulation. The additional qualified individual shall observe the operation and be capable of providing immediate assistance to prevent unauthorized entry.

(b) Radiography shall not be performed if only one (1) qualified individual is present.

(2) Radiographic operations conducted at locations of use authorized by the license shall be conducted in a permanent radiographic installation, unless specifically authorized by the cabinet.

(3) Licensees shall have one (1) year from the effective date of this regulation, to meet the requirements for having two (2) qualified individuals present at locations other than a permanent radiographic installation as specified in subsection (1) of this section.

Section 13. Radiation Safety Officer for Industrial Radiography. The radiation safety officer (RSO) shall ensure that radiation safety is being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's program.

(1) The minimum qualifications, training, and experience for RSOs for industrial radiography is as follows:

(a) Completion of the training and testing requirements of Section 14 of this administrative regulation;

(b) 2000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

(c) Formal training in the establishment and maintenance of a radiation protection program.

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The cabinet may consider alternatives if the RSO has appropriate training or experience in the field of ionizing radiation, and in addition, has adequate formal training with respect to the establishment and maintenance of a radiation safety protection program.

3. The specific duties and authorities of the RSO shall include:
   (a) Establishing and overseeing, operating, emergency, and ALARA procedures as required by 902 KAR 100:019, and reviewing them regularly to ensure that the procedures in use conform to current 902 KAR 100:019 procedures, conform to other requirements in 902 KAR Chapter 100, and to the license conditions.
   (b) Overseeing and approving all phases of the training program for radiographic personnel, ensuring that appropriate and effective radiation protection is taught.
   (c) Ensuring that:
      1. Required radiation surveys and leak tests are performed and documented in accordance with the regulations, including corrective measures if levels of radiation exceed established limits;
      2. Personnel monitoring devices are calibrated and used properly by occupationally-exposed personnel;
      3. Records are kept of the monitoring results;
      4. Timely notifications are made as required by 902 KAR 100:019, Section 40; and
      5. Operations are conducted safely and assume control for institutions to corrective actions including stopping of operations, if necessary.
   (d) Licensees and registrants shall have two (2) years from the effective date of this administrative regulation to meet the requirements of subsections (1) and (2) of this section.

Section 14, Training [and Testing of Radiographers and Radiographers’ Assistants].

1. A licensee or registrant shall not permit an individual to act as a radiographer as defined in 902 KAR 100:010 until the individual has received training in the subjects identified in subsection (8) of this section, in addition to a minimum of two (2) months of on-the-job training, and is certified through a radiographer certification program by a certifying entity in accordance with the criteria specified in Section 1 of this administrative regulation; or

2. A license or registrant may, until two (2) years from the effective date of this administrative regulation, allow an individual who has not met the requirements of the section, to act as a radiographer after the individual has received training in the subjects identified in subsection (8) of this section and demonstrated an understanding of these subjects by successful completion of a written examination that was previously submitted to and approved by the cabinet.

3. A licensee or registrant shall not permit an individual to act as a radiographer as defined in 902 KAR 100:010 until the individual has:
   (a) Been instructed in the subjects outlined in Section 19 of this administrative regulation;
   (b) Received copies of and [ ] instructions in [and demonstrated an understanding of] the following:
      1. Provisions contained in this administrative regulation;
      2. Other applicable provisions of 902 KAR 100:019, 902 KAR 100:040, 902 KAR [100] 065; 902 KAR 100:070, and 902 KAR 100:165;
      3. Conditions of the license or registration certificate issued by the cabinet; and
   (c) The licensees’ or registrant’s approved operating and emergency procedures;
   (b) Demonstrated understanding of the licensees' license and operating and emergency procedures by successful completion of a written or oral examination covering this material;
   (c) Received training in the [Demonstrated competence to use of the licensees’ [the] sources of radiation, or the registrants' radiation machine, radiation exposure devices, in the daily inspection of devices and associated equipment [related-handling tools], and in the use of radiation survey instruments [which shall be employed at his assignment]; and
   (d) [Successfully] Demonstrated an understanding of the use of radiographic exposure devices, sources, survey instruments and associated equipment described in paragraphs (a) and (c) of this subsection by successful completion of a practical examination covering this material.
   (d) Instructions in this subsection by successful completion of:
      1. Written test; and
      2. Field examination on the subjects covered.

4. A licensee or registrant shall not permit an individual to act as a radiographer’s assistant as defined in 902 KAR 100:010 until the individual has:
   (a) Received copies of, and instructions in the following:
      1. Provisions contained in this administrative regulation;
      2. Applicable requirements of 902 KAR 100:019, 902 KAR 100:040, 902 KAR 100:070, and 902 KAR 100:165;
      3. Conditions of the license or registration certificate issued by the cabinet;
   (b) Demonstrated competence to use, under the personal supervision of the radiographer, the sources of radiation, radiographic exposure devices, radiation machines, associated equipment [related-handling tools], and radiation survey instruments that the assistant uses [which may be employed in his assignment]; and
   (c) Demonstrated understanding of the instructions provided in paragraph (a) of this subsection by successfully completing a written test on the subjects covered and has demonstrated competence in the use of hardware described in paragraph (b) of this subsection by successful completion of a practical examination on the use of such hardware.

5. The licensees or registrants shall provide annual refresher safety training for a radiographer and radiographer's assistant at intervals not to exceed twelve (12) months.

6. A licensee or registrant shall provide annual refresher safety training for a radiographer and radiographer's assistant at intervals not to exceed twelve (12) months.

7. (a) Except in those operations where a single individual shall serve as both radiographer and RSO and shall perform all radiography operations, the RSO or designee shall conduct an inspection program of the job performance of a radiographer and radiographer's assistant to ensure that the cabinet's regulations, license requirements, and the applicant's operating and emergency procedures are followed.

(b) The inspection program shall include observation of the performance of the radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals not to exceed six (6) months.

(c) If a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than six (6) months since the last inspection, the radiographer shall demonstrate knowledge of the training requirements of subsection (3)(c) of this section and the radiographer's assistant shall demonstrate knowledge of the training requirements of subsection (4)(b) of this section by a practical examination before these individuals can next participate in a radiographic operation.

(d) The cabinet shall consider alternatives in those situations where the individual serves as both radiographer and RSO.

8. (a) Successfully demonstrated an understanding of the instructions in this subsection by:
      1. Written or oral test; and
      2. Field examination on the subjects covered.

9. (a) Records of the above training, specified in subsection (3) of this section, [including copies of written tests and dates of oral tests and field examinations] shall be maintained by a licensee or registrant for inspection by the cabinet for three (3) years after the record is made [following termination of employment].

(b) Records shall include:
      1. A radiographer certification documents;
      2. Verification of certification status;
      3. Copies or written tests;
      4. Dates of oral tests and practical examinations;
      5. Names of individuals conducting and receiving the oral and practical examinations;
      6. Documentation of annual refresher safety training and semiannual inspections of job performance for a radiographer and radiographer's assistant which shall include:
         a. Topics discussed during the refresher safety training;
         b. Dates the annual refresher safety training was conducted; and
         c. Names of the instructors and attendees.

(b) For inspections of job performance, the records shall also include a list showing the items checked and all noncompliance observed by the RSO.

8. (a) Records of the above training, specified in subsection (3) of this section, [including copies of written tests and dates of oral tests and field examinations] shall be maintained by a licensee or registrant for inspection by the cabinet for three (3) years after the record is made [following termination of employment].

(b) Records shall include:
      1. Radiographer certification documents;
      2. Verification of certification status;
      3. Copies or written tests;
      4. Dates of oral tests and practical examinations;
      5. Names of individuals conducting and receiving the oral and practical examinations;
      6. Documentation of annual refresher safety training and semiannual inspections of job performance for a radiographer and radiographer's assistant which shall include:
         a. Topics discussed during the refresher safety training;
         b. Dates the annual refresher safety training was conducted; and
         c. Names of the instructors and attendees.

(b) For inspections of job performance, the records shall also include a list showing the items checked and all noncompliance observed by the RSO.
(a) Fundamentals of radiation safety including:
1. Characteristics of gamma radiation;
2. Units of radiation dose and quantity of radioactivity;
3. Hazards of exposure to radiation;
4. Levels of radiation from radioactive material; and
5. Methods of controlling radiation dose by time, distance, and shielding.
(b) Radiation detection instruments including:
1. Use, operation, calibration, and limitations of radiation survey instruments;
2. Survey techniques; and
3. Use of personnel monitoring equipment.
(c) Equipment to be used including:
1. Operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures of models of source assemblies (pigtails);
2. Storage, control and disposal of radioactive material;
3. Inspection and maintenance of equipment; and
4. Operation and control of radiation machines.
(d) The requirements of pertinent cabinet administrative regulations; and
(e) Case histories of accidents in radiography.
(f) Licenses and registrants shall have one (1) year from the effective date of this administrative regulation, to comply with the additional training requirements specified in subsections (3)(a) and (4)(a) of this section.

(10) Licenses and registrants shall have one (1) year from the effective date of this regulation, to comply with the certification requirements specified in subsection (1) of this section. Records of radiographer certification maintained in accordance with subsection (7) of this section shall provide appropriate affirmation of certification requirements specified in subsection (1) of this section.

Section 15: [12:] Operating and Emergency Procedures. (1) A licensees or registrants' operating and emergency procedures shall include instructions in at least the following:

(a) [14:] The handling and use of sources of radiation to be employed so that no individual is likely to be exposed to radiation doses in excess of the limits established in 10 CFR 100.131, Section 3;
(b) [18:] Methods and occasions for conducting radiation surveys;
(c) [19:] Methods for controlling access to radiographic areas;
(d) [14:] Methods and occasions for locating and securing sources of radiation, radiographic exposure devices, and transport and storage containers;
(e) [19:] Personnel monitoring and the use of personnel monitoring equipment, including steps that shall be taken immediately by radiography personnel if a pocket dosimeter is found to be off-scale or an alarm rate meter alarms unexpectedly;
(f) [16:] Transportation of sources of radiation to field locations, including:
1. [18:] Packaging of radiographic exposure devices and storage containers in the [sources of radiation-in] vehicles;
2. [18:] Placing [b b] Posting of vehicles [if needed]; and
3. [18:] Control of sources of radiation during transportation;
(g) [17:] Minimizing exposures of individuals if an accident occurs;
(h) [19:] The procedure for notifying proper personnel if an accident occurs;
(i) [16:] Maintenance of records; and
(j) [16:] The inspection, [and] maintenance, and operability checks of radiographic exposure devices, radiography machines [source changers], storage containers, survey instruments, and transport containers [and other sources of radiation].

(2) The license or registrant shall maintain copies of current operating and emergency procedures until the cabinet terminates the license. Superseded material shall be retained for three (3) years after the change is made.

Section 16: [14:] Personnel Monitoring [Control]. (1) A license applicant or registrant shall not permit an individual to act as a radiographer or radiographer's assistant unless, at all times during radiographic operations, the individual wears, on the trunk of the body, a direct reading pocket dosimeter; an operating alarm rate meter; and a film badge or a thermoluminescent dosimeter (TLD).

(a) The wearing of an alarm rate meter shall not be required for permanent radiography facilities in which other an appropriate alarm or a warning device is [devices are] in routine use or during radiographic operations using radiation machines.

(b) Pocket dosimeters shall have a range from zero to at least 200 milliradians (0.001 millirem) and be recharged daily or at the start of a shift. Electronic personnel dosimeters may only be used in place of ion-chamber pocket dosimeters.

(c) A film badge or thermoluminescent dosimeter shall be assigned to, and worn by, only one (1) individual.
(d) Film badges shall be replaced at periods not to exceed one (1) month and TLDs shall be replaced at periods not to exceed three (3) months.

(e) After replacement, a film badge or TLD shall be processed as soon as possible.

(2) Direct reading [Pocket] dosimeters, such as pocket dosimeters or electronic personal dosimeters, shall be read and exposures recorded at the beginning and end of a shift [least once daily].

(a) If an individual's pocket dosimeter is found to be off-scale, or if his or her electronic personal dosimeter reads greater than 200 milliradians (2 millirems), and the possibility of radiation exposure cannot be ruled out as the cause (discharged beyond its range):
1. The film badge or thermoluminescent dosimeter shall be sent for processing within twenty-four (24) hours [immediately processed];
2. Radiographic operations by the individual shall cease; and
3. The individual shall not return to work with sources of radiation until a determination of the radiation exposure has been made. This determination shall be made by the RSO or the RSO's designee. The results of this determination shall be included in the records maintained in accordance with paragraph (b) of this subsection and subsection (4)(b) of this section.

(b) A license or registrant shall maintain the following exposure records:

1. Direct reading dosimeter readings and yearly operability checks for three (3) years after the record is made;
2. Reports received from the film badge or TLD processor until the cabinet terminates the license; and
3. Records of estimates of exposures as a result of off-scale personal direct reading dosimeters, or lost or damaged film badges or TLDs, until the cabinet terminates the license.

(c) Where received from the film badge or thermoluminescent dosimeter processor and records of daily pocket dosimeter readings shall be kept for inspection until the cabinet authorizes their disposal.

[3] If a film badge or thermoluminescent dosimeter is lost or damaged, the worker shall cease work immediately until:

(a) A replacement film badge or thermoluminescent dosimeter is provided; and

(b) The exposure is calculated for the time period from issuance to loss or damage of the film badge or thermoluminescent dosimeter. The results of the calculated exposure and the time period for which the film badge or TLD was lost or damaged shall be included in the records maintained in accordance with subsection (2) of this section.

(d) Pocket dosimeters, or electronic personal dosimeters, shall be checked for correct response to radiation at periods not to exceed twelve (12) months [one (1) year].

(e) Acceptable dosimeters shall read within plus or minus twenty (20)[thirty (30)] percent of the true radiation exposure.

(f) Records of this check shall be maintained for inspection by the cabinet for two (2) years from the date of the check.

(g) An alarm rate meter shall:
1. Be checked to ensure that the alarm function properly (sounds) prior to use at the start of a [each] shift;
2. Be set to give an alarm signal at a preset dose rate of 500 mR/hr [5 mSv/hr];
3. Require special means to change the preset alarm functions; and
4. Be calibrated at periods not to exceed twelve (12) months [one (1) year].

(h) Acceptable rate meters shall Alarm within plus or minus twenty (20) percent of the true radiation dose rate.

(i) Records of alarm rate meter calibrations shall be maintained for three (3) years after the record is made.
Section 17. Documents Required at Field Stations and Temporary Job Sites. A licensee or registrant [conducting industrial radiography at a temporary site] shall have the following records available [at that site] for inspection by the cabinet at applicable field stations and all temporary job sites:

(1) A copy of the operating and emergency procedures;
(2) A current copy of the radioactive material license or registration certificate;
(3) A copy of 902 KAR 100:019, 902 KAR 100:100, and 902 KAR 100:165;
(4) Latest survey records required by Section 20 of this administrative regulation [and 902 KAR-100:019; Section 31; for the period of operation at the site];
(5) Records of direct reading dosimeters, such as pocket dosimeters or electronic personal dosimeters readings as required by Section 16 of this administrative regulation;
(6) Evidence of [daily] pocket dosimeter readings for the period of operation at the site;
(6) The latest instrument calibration of the radiation survey instrumentation in use at the site, as required by Section 5 of this administrative regulation;
(7) Utilization records for all radiographic exposure devices dispatched from that location as required by Section 6 of this administrative regulation;
(8) Records of equipment problems identified in daily checks of equipment required by Section 9 of this administrative regulation;
(9) Records of alarm system and entrance control checks required by Section 10 of this administrative regulation, if applicable;
(10) Evidence of the latest calibrations of alarm ratemeters and operability checks of pocket dosimeters and electronic personal do- simeters as required by Section 16 of this administrative regulation;
(11) The shipping papers for the transportation of radioactive materials required by 902 KAR 100:070; and
(12) If operating in accordance with reciprocity pursuant to 902 KAR 100:065, a copy of the Agreement State or U.S. Nuclear Regulatory Commission license authorizing the use of radioactive materials.
[and test record for specific devices in use at the site. Acceptable records include tags or labels affixed to the device or survey meter.]

Section 18. Specific Provisions for Radiographic Personnel Performing Industrial Radiography. (1) At a job site, the following shall be supplied by a licensee or registrant:

(a) At least one (1) operable, calibrated survey instrument for every exposure device or radiation machine in use;
(b) A current whole body personnel monitor (TLD or film badge) for each individual performing radiographic operations;
(c) An operable, calibrated pocket dosimeter with a range of zero to 200 milirem/hours for each worker performing radiographic operations;
(d) Appropriate bare(r) gloves and signs; and
(e) An operable, calibrated, alarming [alarm] ratemeter for every person performing radiographic operations using a radiographic exposure device [each individual].

(2) A radiographer at a job site shall have on their person a valid certificate ID card issued by a certifying entity.
(3) Industrial radiographic operations shall not be performed if the items in subsections (1) and (2) [subsection(4)] of this section are not available at the job site or are inoperable.
(4) [During an inspection by the cabinet, the cabinet inspector] may terminate an operation if items in subsections (1) and (2) [subsection(4)] of this section are not available or [and] operable or if the required number of radiographic personnel are not present. Operations shall not be resumed until all required conditions are met.

Section 19. Surveillance. [Security.] During a [check] radiographic operation, a radiographer or the other individual present, as required by Section 12 of this administrative regulation [radiographer's assistant] shall maintain direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, except at permanent radiographic installations where [if the high radiation area is]:

(1) Entering areas are locked; and
(2) The requirements of Section 10 of this administrative regulation are met. [Equipped with a control device or an alarm system as described in 902 KAR-100:019; Section 14(1) or (2); or
(3) Locked to protect against unauthorized or accidental entry.]

Section 20. Posting. (1) An area [Except as otherwise exempt in 902 KAR-100:019; Section 25; areas in which radiography is being performed shall be conspicuously posted as required in 902 KAR 100:010, Section 34(1) and (2).]
(2) Exceptions listed in 902 KAR 100:019 do not apply to industrial radiographic operations.

Section 21. Special Provisions and Exemptions for Cabinet X-ray Systems. (1) Uses of certified and certifiable cabinet x-ray systems shall be exempt from the requirements of this administrative regulation except for the following:
(a) For certified and certifiable cabinet x-ray systems, including those designed to allow admittance of individuals:
1. A registrant shall not permit an individual to operate a cabinet x-ray system until the individual has received a copy of and instruction in the operating procedures for the unit.
2. A test for proper operation of interlocks shall be conducted and recorded at intervals not to exceed six (6) months.
3. A registrant shall perform an evaluation of the radiation dose limits to determine compliance with 902 KAR 100:019, Section 10, and 21 CFR 1020.40, Cabinet X-ray Systems, 39 Federal Register 12926, April 10, 1974, at intervals not to exceed one (1) year.
4. Records shall be maintained demonstrating compliance with subsections (1) [subsection 2] and 1 until disposal is authorized by the cabinet.
5. Records of the evaluation required by paragraph 3 of this paragraph shall be maintained for two (2) years after the evaluation is performed.
(b) Certified cabinet x-ray systems shall be maintained in compliance with 21 CFR 1020.40, Cabinet X-ray Systems, 39 Federal Register 12926, April 10, 1974.
2. Modifications shall not be made to the system unless prior cabinet approval has been granted.
3. Industrial uses of hand-held light intensified imaging devices shall be exempt from the requirements of this administrative regulation if the dose rate is eighteen (18) inches from the source of radiation to any individual does not exceed two (2) million per hour. Devices exceeding this limit shall meet the applicable requirements of this administrative regulation and the licensing or registration requirements of 902 KAR 100:040 and 902 KAR 100:110, as applicable. [Systems for cabinet radiography designed to allow admittance of individuals shall:
(a) Comply with applicable provisions of this administrative regulation and 902 KAR-100:019; Section 10; and
(b) Be evaluated at intervals not to exceed one (1) year to assure compliance with the applicable provisions as specified in Section 14(1)(4) of this administrative regulation. Records of these evaluations shall be maintained for inspection by the cabinet for a period of two (2) years after the evaluation.
3. If a system is a certified cabinet x-ray system, it shall comply with applicable provisions of this administrative regulation and 21 CFR 1029.40.
(5) Certified cabinet x-ray systems designed to exclude individuals from the interior of the cabinet shall be exempt from the provisions of this administrative regulation, except operating personnel shall be provided with a film badge or a thermoluminescent dosimeter.
(a) A report of the results of the film badge or thermoluminescent dosimeter shall be maintained for inspection by the cabinet.
(b) A registrant shall not permit an individual to operate a cabinet x-ray system until the individual has:
1. Received a copy of, and instruction in, the operating procedures for the unit; and
2. Demonstrated competence in its use.
(c) Records which demonstrate compliance with this subsection shall be maintained for inspection by the cabinet until disposal is authorized by the cabinet.
(d) Tests for proper operation of high radiation area control devices or alarm systems, if applicable, shall be conducted, recorded, and maintained as described in Section 10 of this administrative regulation.
(e) A registrant shall perform an evaluation at intervals not to exceed one (1) year to determine compliance with 40 CFR 2075.40; Section 10.

1. If a system is a certified cabinet x-ray system, it shall be evaluated at intervals not to exceed one (1) year to determine compliance with 21 CFR 1020.40.

2. Records of these evaluations shall be maintained for inspection by the cabinet for a period of two (2) years after the evaluation.

(4) Certified cabinet x-ray systems shall be maintained in compliance with 21 CFR 1020.40 unless prior approval has been granted by the cabinet under 40 CFR 2075.40; Section 7.

Section 19: Minimum Training Requirements for Industrial Radiographers. Industrial radiographers shall receive minimum training in the following areas:

(a) Fundamentals of radiation safety;
(b) Characteristics of radiation;
(c) Units of radiation dose (rem); and quantity of radioactivity (curie);
(d) Significance of radiation dose;
1. Radiation protection standards;
2. Biological effects of radiation dose;
3. Case histories of radiography accidents;
(e) Methods of controlling radiation dose;
1. Working time;
2. Working distance;
3. Shielding;
(f) Radiation detection instrumentation to be used;
1. Use of radiation survey instruments;
2. Operation;
2. Calibration;
3. Limitations;
(b) Survey techniques;
(c) Use of personnel monitoring equipment;
1. Film badges;
2. Pocket dosimeters;
3. Thermoluminescent dosimeters;
4. Alarm retemeters;
(f) Radiographic equipment to be used;
2. Remote handling equipment;
(b) Operation and control of radiographic exposure devices and sealed sources, including pictures or models of source assemblies (pigtails);
(c) Storage and transport containers and source changers;
(d) Operation and control of x-ray equipment;
(e) Collimators;
(f) Provisions of 10 CFR 34 and 40 CFR Chapter 106; and
(g) The licensee's or registrant's written operating and emergency procedures.

Section 22. [29.] Radiation Surveys and Survey Records. (1) A radiographic operation shall not be conducted unless calibrated and operable radiation survey instrumentation, as described in Section 5 of this administrative regulation, is available and used at each location of radiographic operations.

(2) A survey with a radiation survey instrument shall be made after each radiographic exposure, of the radiographic exposure device and the guide tube, if approaching the device or guide tube to determine that the sealed source has been returned to its shielded position before exchanging films, repositioning the exposure head, or dismantling the equipment.

(a) The entire circumference of the radiographic exposure device shall be surveyed;
(b) If the radiographic exposure device has a source guide tube, the survey shall also include the guide tube;
(c) A survey shall be conducted of the radiographic exposure device with a calibrated radiation survey instrument if the source is exchanged and if a radiographic exposure device is a survey shall be made of the storage area if a radiographic exposure device is being placed in a storage area to ensure that the source is in its shielded position;
(d) A physical radiation survey required by Section 3 of this administrative regulation shall be made to determine that each sealed source is in its shielded position prior to securing the radiographic exposure device, storage container, or source changer in a storage area.

(5) A physical radiation survey shall be made after a radiographic exposure using radiographic machines to determine that the machine is off.

(5) [166] Records shall be kept of the exposure device survey conducted before the device is placed in storage as specified in subsection (3) of this section, if that survey is the last one performed in the workday. The records shall be surveys conducted and maintained for inspection by the cabinet for three (3) to (2) years after it is made. Completion of the survey. If the survey was used to determine an individual's exposure, the records of the survey shall be maintained until the cabinet authorizes their disposition.

Section 21: Required Administrative Procedures for Industrial Radiography Program. (1) Licensees and registrants shall have an adequate program for training radiographers and radiographers' assistants and submit to the cabinet a schedule or description of the program which specifies the:

(a) Initial training;
(b) Periodic training;
(c) On-the-job training;
(d) Means to be used by the licensee or registrant to determine the radiographer's knowledge and understanding of and ability to comply with 40 CFR Chapter 106 licensing requirements; and the licensee or registrant's operating and emergency procedures;
(e) Means to be used by the licensee or registrant to determine the radiographer's assistant's knowledge and understanding of and ability to comply with the radiographer's assistant's operating and emergency procedures.

(2) A license or registrant shall establish and submit to the cabinet satisfactory written operating and emergency procedures.

(3) A license or registrant shall submit to the cabinet a description of its inspection program adequate to ensure that licensee provisions, administrative regulations, and the licensee's or registrant's operating and emergency procedures shall be followed by radiographers and radiographers' assistants. The inspection program shall:

(a) Include observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed three (3) months;
(b) Provide that if a radiographer or a radiographer's assistant has not participated in a radiographic operation for more than three (3) months since the last inspection, the individual's performance shall be observed and recorded.

(c) Include the retention of inspection records on the performance of radiographers or radiographers' assistants for two (2) years.

(4) A licensee or registrant shall submit to the cabinet a description of his or her organizational structure pertaining to the radiography program, including:

(a) Specified delegations of authority;
(b) Responsibility for operation of the program;
(5) A licensee who desires to conduct his or her own leak tests shall establish adequate procedures to be followed in leak testing sealed sources for possible leakage and contamination, and shall submit to the cabinet a description of the procedures including:
(a) Instrumentation to be used;
(b) Method of performing tests (for example, points on equipment to be smeared and method of checking a smear); and
(c) Pertinent experience of the person who will perform the test.

Section 23. [22.] Supervision of Radiographer's Assistant. If a radiographer's assistant uses radiographic exposure devices, associated equipment, sealed sources, or related source handling tools, or conducts radiation surveys required by Section 22 [29.] of this administrative regulation to determine that the sealed source has returned to the shielded position after an exposure or the radiation machine is off, the radiographer's assistant shall be under the personal supervision of a radiographer. The personal supervision shall include the radiographer:

(1) Being physically present at the site where a source [sources] of radiation and associated equipment are [are] being used;
Section 24, [23] Reporting Requirements. (1) In addition to the reporting requirements specified in 902 KAR 100:040, Section 18, and in accordance with other sections of this administrative regulation, a licensee or registrant shall provide a written report to the Cabinet for Health Services [Human Resources], Radiation Health and Toxic Agents [Cabinet] Branch within thirty (30) days of the occurrence of the following incidents involving radiographic equipment:
(a) Unintentional disconnection of the source assembly from the control cable; and
(b) Inability to retract the source assembly to its fully shielded position and secure it in this position, [er]
(c) Failure of a component, critical to safe operation of the device, to properly perform its intended function; or
(d) An indicator on a radiation machine fails to show that radiation is being produced, an exposure switch fails to terminate production of radiation if turned to the off position, or a safety interlock fails to terminate x-ray production.

(2) The licensee or registrant shall include the following information in a report submitted in accordance with [under] subsection (1) of this section:
(a) A description of the equipment problem;
(b) Cause of an incident, if known;
(c) Manufacturer and model number of equipment involved in the incident;
(d) Place, time and date of the incident;
(e) Actions taken to establish normal operations;
(f) Corrective actions taken or planned to prevent recurrence; and
(g) Qualifications of personnel involved in the incident.

(3) Reports of overexposures submitted under 902 KAR 100:019, Section 40, involving failure of safety components of radiography equipment shall [also] include the information specified in subsection (2) of this section.

(4) A licensee shall notify the cabinet if conducting radiographic operations or storing radioactive material at a location not listed on the license for a period in excess of 180 days in a calendar year.

(2) This material [A copy of the "Gamma Radiography-Specifications for Design and Testing of Apparatus"] may be inspected, copied, [viewed] or obtained, subject to applicable copyright law, at the Department for Public Health, Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. until 4:30 p.m.; Monday through Friday.

RICE C. LEACH, M.D., Commissioner
JIMMY D. HELTON, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held December 21, 2000 at 9 a.m. in the Cabinet for Health Services Auditorium, 1st floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 14, 2000. If no notice 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. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of Counsel, 275 East Main Street - 4W-
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FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, and 10 CFR 34 and 10 CFR 71 as promulgated by the U.S. Nuclear Regulatory Commission and 21 CFR 1020.40 as promulgated by the U.S. Food and Drug Administration.

2. State compliance standards. Administrative regulation provides industrial radiographer licensees with requirements for conducting industrial radiography in Kentucky.

3. Minimum or uniform standards contained in the federal mandate. This amendment will bring about compatibility with U.S. Nuclear Regulatory Commission’s requirements.

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. Administrative regulation provides equivalent requirements for industrial radiographer licensees to those of the U.S. Nuclear Regulatory Commission.

CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(Amendment)

906 KAR 1:110. Critical access hospital regulation.

RELATES TO: KRS 216.380, 216B.010, 216B.015, 216B.040, 216B.042, 216B.045 to 216B.055, 216B.075, 216B.105 to 216B.131, 331.560(4), 314.011(8), 42 CFR 485.618(d)

STATUTORY AUTHORITY: KRS 216.380(11), 216B.040(3)(a), 216B.042(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.380(11) requires the Cabinet for Health Services to promulgate administrative regulations necessary to implement a program for licensure of critical access hospitals. This administrative regulation establishes quality of care and licensure standards for critical access hospitals.

Section 1. Definitions. "Licensee" means a general acute-care hospital relicensed as a critical access hospital.

Section 2. Requirements for Critical Access Status. (1) In order to be relicensed as a critical access hospital, a general acute-care hospital shall meet the requirements established in KRS 216.380(3).

(2) Before the cabinet certifies a hospital as a necessary provider pursuant to KRS 216.380(3)(a) the hospital shall meet one (1) of the following criteria:

(a) Be located in a county in which the percentage of the population with income less than 200 percent of poverty is greater than the state average, based on data published by the UK Center for Rural Health in the document titled Good Samaritan Report 1997 - A County-Based Atlas of Health and Social Data for All Kentucky available on-line at the following internet address:

http://www.mc.uky.edu/ruralhealth/GoodSarn.htm

(b) Be located in a county that has an unemployment rate higher than the state average unemployment rate, based on data published by the Cabinet for Health Services, Department for Public Health, in the report titled County Health Profiles available on-line at the following internet address:

http://publichealth.state.ky.us/hd-kycountyhealthprofiles.htm

(c) Be located in a county with a greater number of people age sixty-four (64) or older than the state average, based on data published by the UK Center for Rural Health in the document titled Good Samaritan Report 1997 - A County-Based Atlas of Health and Social Data for All Kentucky, available on-line at the following internet address:

http://www.mc.uky.edu/ruralhealth/GoodSarn.htm

(d) Treat on average a higher than state average percentage of Medicare patients, based on data published by the Cabinet for Health Services, Department for Public Health in the report titled 1999 Hos-

pital Utilization Services Report, available online at the following internet address:

http://172.26.45.9/hospital_utilization_services_report.htm; or

(e) Treat on average a higher than state average percentage of Medicaid patients, based on data published by the Cabinet for Health Services, Department for Public Health in the report titled 1999 Hos-

pital Utilization Services Report, available online at the following internet address:


(3) A general acute-care hospital applying to be relicensed as a critical access hospital shall supply documentation that the requirement established in KRS 216.380(3) are met.

(4) If denial of the relicensing of a general acute-care hospital as a critical access hospital is appealed, it shall be appealed pursuant to the provisions of KRS Chapter 13B.

Section 3. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the critical access hospital and for compliance with federal, state, and local law pertaining to the operation of the critical access hospital.

(2) A critical access hospital shall be under the medical direction of a physician licensed to practice medicine in Kentucky.

(3) The licensee shall:

(a) Establish written policies and lines of authority; and

(b) Designate the person principally responsible for the daily operation of the critical access hospital.

(4) The licensee shall develop a patient care policy with the advice of a group of professional persons, as identified by the licensee.

(a) The group of professional persons shall include:

1. One (1) or more physicians licensed in the Commonwealth of Kentucky; and

2. One (1) or more persons who are not members of the staff.

(b) The patient care policy shall include:

1. A description of services that the critical access hospital shall provide directly or through contractual agreement;

2. A written program narrative describing in detail the:

a. Services to be offered;

b. Methods and protocols for service delivery;

c. Qualifications of personnel to be involved in the delivery of services; and

d. Outcomes expected to be reached through the delivery of specified services.

3. Guidelines for medical case management of health problems which include:

a. Criteria for determining if a case requires medical consultation;

b. Patient referral procedures; and

c. Maintenance of health records.

4. Procedures for the proper storage, handling and administration of drugs and biologicals; and

5. Procedures establishing the annual review and evaluation of services provided.

(5) A critical access hospital shall establish a written policy regarding patient rights and responsibilities. The policy shall assure that each patient is:

(a) Informed of these rights and of rules and regulations governing patient conduct and responsibilities, including a procedure for handling patient grievances;

(b) Informed of services available and related charges, including charges not covered by Medicare, Medicaid, or other third-party payer;

(c) Informed of his:

1. Medical condition, unless medically contraindicated as documented in his medical record;

2. Right to participate in planning his medical treatment;

3. Right to refuse to participate in experimental research;

(d) Assisted in understanding his patient rights;

(e) Provided confidential treatment of his records and is given the opportunity to approve or refuse their release to an individual not involved in his care, except as required by Kentucky law or third-party payment contract;

(f) Treated with consideration, respect, and recognition of his dignity and individuality, including privacy in treatment and in the care of his personal health needs; and

(g) Informed of the procedure for filing a grievance or a recom-
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reconciliation to change a policy or service. The policy shall establish a time frame within which critical access hospital personnel shall determine what corrective action to take.

(b) Personnel.
(a) Staffing shall be in accordance with KRS 216.380(6).
(b) A physician shall:
   1. Be responsible for all medical aspects of the critical access hospital;
   2. Provide direct medical services in accordance with KRS Chapter 311.
   3. Be present to provide medical direction, supervision, and consultation to the staff at least once in every two (2) week period, unless no patient has been treated since the last visit;
   4. Participate with other medical personnel in developing, executing, and periodically reviewing written policies and services;
   5. Review and sign patient records during the site visit; and
   6. Provide medical orders and medical care services to patients in accordance with the critical access hospital protocols.

(c) A registered nurse or licensed practical nurse shall be on duty if [when] an inpatient is present.

(7) The critical access hospital shall have transfer and linkage contracts that meet the requirements of KRS 216.380(6) and (9)(a).

(8) Medical records.
(a) A critical access hospital shall maintain medical records. A medical record shall contain at least the following:
   1. The names of the patient's immediate family members;
   2. Medical and social history, including data obtainable from other providers;
   3. Description of each medical visit or contact, including:
      a. Condition or reason necessitating visit or contact;
      b. Assessment;
      c. Diagnosis;
      d. Services provided;
      e. Medications and treatments prescribed; and
      f. Disposition made;
   4. Reports of laboratory, x-ray, and other test findings; and
   5. Documentation of referrals made, including:
      a. Reason for referral;
      b. To whom patient was referred; and
      c. Information obtained from referral source.

(b) Confidentiality of individual patient records shall be maintained at all times.

(c) Transfer of records. The critical access hospital shall establish systematic procedures to assist in continuity of care if the patient moves to another source of care, and shall, upon proper release, transfer medical records or an abstract upon request.

(d) Retention of records. After a patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for five (5) years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(9) Utilization review and medical audit. In order to determine the appropriateness of services delivered, there shall be written plans for utilization review which identifies the frequency of reviews and composition of the body conducting the review.

(10) Quality assessment and performance improvement program.
(a) A critical access hospital shall have a program, in accordance with KRS 216.380(7), to ensure continuous and effective mechanisms for:
   1. Review and evaluation of patient care; and
   2. Corrective action.

(b) The program shall be approved by the licensee.

(c) The program shall:
   1. Establish responsibility for monitoring and evaluation of services;
   2. Delineate the scope of care;
   3. Identify specific aspects of care to be provided;
   4. Establish and document clinical criteria used to monitor care and services;
   5. Systematically evaluate the standard of care to identify problems and recommend corrective action or alternatives to improve the standard of care;
   6. Establish criteria to assess the effectiveness of corrective action taken to improve care; and
   7. Require documentation of improvements in the standard of care, subsequent to corrective action taken.

(11) Contracted services. The critical access hospital shall assure that a service provided under contract is properly licensed or certified in accordance with applicable local, state, and federal regulations and statutes.


(b) A critical access hospital shall provide, either directly or through contract, basic laboratory services essential to the immediate diagnosis and treatment of the patient on a twenty-four (24) hour basis.

(b) If the critical access hospital provides laboratory services directly, the service shall be in compliance with 902 KAR 20:016, Section 4(4).

(c) If the critical access hospital contracts for laboratory services, the laboratory it contracts with shall be in compliance with KRS Chapter 333.

(d) The following services shall be provided:
   1. [a] Chemical examination of urine, including ketone measurement, by stick or tablet method, or both;
   2. [b] Microscopic examination of urine sediment;
   3. [c] Hemoglobin or hematocrit;
   4. [d] Blood sugar;
   5. [e] Gram stain;
   6. [f] Examination of stool specimens for occult blood;
   7. [g] Pregnancy tests;
   8. [h] Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and
   9. [i] Test for pinworms.

(3) A critical access hospital shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and shall have available the drugs and biologicals commonly used in life-saving procedures, such as analgesics, local anesthetics, antibiotics, anticonvulsants, antidiotes and emetics, serums and toxoids.

(a) Examination services shall be provided by the critical access hospital in accordance with 902 KAR 20:012.

(b) There shall be a physician, nurse practitioner, or physician assistant with training or experience in emergency care on-call and immediately available by telephone or radio contact, and available on site within thirty (30) minutes on a twenty-four (24) hour per-day basis.

(c) A registered nurse shall be on duty at the hospital to provide immediate emergency care on a twenty-four (24) hour per day basis.

(d) Emergency services shall be provided in accordance with KRS 216.380(4).

(4) In accordance with KFS 216.380(4)(b), a critical access hospital shall provide, either directly or through contract, basic pharmacy services essential to the treatment of the patient, on a twenty-four (24) hour basis.

(a) If the critical access hospital provides pharmacy services directly, it shall be in compliance with 902 KAR 20:016, Section 4(5).

(b) If the critical access hospital contracts for pharmacy services, the pharmacy it contracts with shall be in compliance with KRS Chapter 315.

(5) In accordance with KFS 216.380(4)(b), a critical access hospital shall provide, either directly or through contract, basic radiology services essential to the immediate diagnosis and treatment of the patient, on a twenty-four (24) hour basis.

(a) If the critical access hospital provides radiology services directly, it shall be in compliance with 902 KAR 20:016, Section 4(6).

(b) If the critical access hospital contracts for radiology services, the radiology service it contracts with shall have a current license or registration pursuant to KRS 211.842 to 211.852 and applicable [any] administrative regulations thereunder.

(6) Pursuant to KRS 216.380(4)(b), dietary services shall be provided either directly or by contract in accordance with 902 KAR 20:016, Section 4(3), if [when] an inpatient is in the critical access hospital for more than twelve (12) hours.

Section 6. [5] Facility Requirements. A critical access hospital shall comply with the requirements of 902 KAR 20:009 related to the services offered.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form L&R 242, Application for Initial License to Operate a Critical Access Hospital (CAH), June 2000 edition; and
(b) Form L&R 242A, Application for Relicensing to Operate a Critical Access Hospital (CAH), June 2000 edition.
(2) This material may be inspected, copied, or obtained at the Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Fourth Floor East, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PAMELA J. MURPHY, Inspector General
JIMMY D. HELTON, Secretary

APPROVED BY AGENCY: October 27, 2000
FILED WITH LRC: October 27, 2000 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 2000, 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, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Alex Reese
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes licensing requirements for critical access hospitals. The requirements for administration and operation, provision of services, physical environment, and the physical plant are outlined.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the minimum state licensure requirements for critical access hospitals.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216B.380(11) requires the Cabinet for Health Services to promulgate administrative regulations necessary to implement a program for licensure of critical access hospitals. This administrative regulation establishes quality of care and licensure standards for critical access hospitals.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the Office of the Inspector General the authority to ensure that critical access hospitals provide adequate services to meet patient needs and provide for patient safety.
(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 amended administrative regulation will establish specific criteria for the Secretary of the Cabinet for Health Services to determine if a general acute care hospital is eligible for relicensing as a critical access hospital. The amended regulation will also reference changes to KRS 216.380 enacted by the 2000 General Assembly of the Kentucky Legislature.
(b) The necessity of the amendment to this administrative regulation: KRS 216.380 states that a general acute care hospital may be relicensed as a critical access hospital if it is certified by the Secretary of the Cabinet for Health Services as a necessary provider of health care services to area residents. The amended regulation will establish the specific criteria for general acute care hospitals to be certified by the Secretary of the Cabinet for Health Services as a necessary provider of health care services to area residents.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 216B.380(11) requires the Cabinet for Health Services to promulgate administrative regulations necessary to implement a program for licensure of critical access hospitals. This administrative regulation establishes quality of care and licensure standards for critical access hospitals.
(d) How the amendment will assist in the effective administration of the statutes: The amended regulation will ensure that specific criteria are utilized by the Cabinet for Health Services in determining that a hospital is a necessary provider of health care services pursuant to KRS 216.380(3)(a)1.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 32 health care facilities that have been identified as potentially eligible to be relicensed as critical access hospitals; however, any health facility that meets the statutory definition established in KRS 216.380 and the regulatory requirements of this amended administrative regulation may be relicensed as a critical access hospital.
(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: A health facility that is licensed and certified by Medicare and Medicaid as a critical access hospital will receive cost based reimbursement from Medicare. The cost based reimbursement will help ensure that these facilities are able to provide access to health care for rural Kentuckians.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: This amended regulation will result in no increased implementation cost.
(b) On a continuing basis: This amended regulation will result in no increased implementation cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increased funding is required to implement this amended administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not directly or indirectly establish any fees.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the United States Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Long Term Care (Amendment)

907 KAR 1:170. Payments for home and community based services.

RELATES TO: 42 CFR 441 Subparts B, G, 42 USC 1396 a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for
VOLUME 27, NUMBER 6 – DECEMBER 1, 2000

Health Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.620 authorizes the cabinet to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for services provided by home and community based waiver service providers to an eligible recipient as an alternative to nursing facility care.

Section 1. Definitions. (1) "ADHC" means adult day health care.
(2) "ADHC center" means an adult day health care center.
(a) Licensed in accordance with 502 KAR 20:065E, Section 4; and
(b) Certified for Medicaid participation by the department.
(3) "DP" means developmentally disabled.
(4) "Department" means the Department for Medicaid Services or its designee.
(5) "HCB recipient" means an individual who:
(a) Meets the criteria for a recipient as defined in KRS 205.8451; and
(b) Meets the criteria for HCB waiver services as defined in 907 KAR 1:160.
(6) "Home and community based waiver" or "HCB waiver" means home and community based waiver services.
(7) "Level I" means a reimbursement rate of up to twenty-eight (28) dollars paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as HCB waiver.
(8) "Level II" means a reimbursement rate of up to forty-three (43) dollars paid to an ADHC center.
(a) For a basic unit of service provided by the ADHC center to an individual designated as HCB waiver; and
(b) If the ADHC center meets the criteria established in Sections 5 and 6 of this administrative regulation.
(9) "Medically necessary" or "medical necessity" means that a covered benefit shall be:
(a) Provided in accordance with 42 CFR 440.230;
(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;
(c) Clinically appropriate in terms of amount, scope, and duration based on generally accepted standards of good medical practice;
(d) Provided for medical reasons rather than primarily for the convenience of the HCB recipient, caregiver, or the provider;
(e) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may for practical purposes be safely and effectively provided;
(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and
(g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 USC 1396(d) and 42 CFR Part 441 Subpart B for individuals under twenty-one (21) years of age.
(10) "Peer review organization" or "PRO" is defined in 42 CFR 462.101.
(11) "Upper limit" means the maximum amount the department shall reimburse for a unit of service.

Section 2. Coverage. The department shall reimburse a participating HCB waiver provider for a service rendered to an HCB recipient pursuant to 907 KAR 1:160.

Section 3. Payment Amounts for HCB Waiver Covered Services. (1) An HCB waiver provider providing services to an HCB recipient shall comply with the provisions established in 907 KAR 1:030; 907 KAR 1:031; 907 KAR 1:671; 907 KAR 1:672; and 907 KAR 1:673.
(2) An HCB waiver provider shall be reimbursed in accordance with 907 KAR 1:031 for the following HCB waiver services:
(a) Assessment which, as established in 907 KAR 1:160E, shall consist of one (1) unit;
(b) Reassessment;
(c) Case management;
(d) Homemaker; or
(e) Personal care.
(3) An HCB waiver provider shall be:
(a) Reimbursed based on a prospectively set upper limit; and
(b) The upper limit shall be set at 130 percent of the weighted median of an array of service costs.
(4) The department shall:
(a) Use the HCB waiver provider's most recent cost report data available as of May 31 to determine the rate for the next fiscal year which begins July 1;
(b) Update upper limits each July 1;
(c) Not apply upper limits until a provider has participated in the program for two (2) fiscal years; and
(d) Apply upper limits in accordance with 907 KAR 1:031 to the provider's rate regardless of the time the provider has participated in the Medicaid Program.
(5) If a provider fails to submit a cost report to the department before May 31, that provider's rates for HCB waiver services shall remain the same as those of the previous fiscal year.
(6) Payment for a covered respite service shall:
(a) Be limited to $2,000 per six (6) month period within a calendar year beginning January 1 through June 30 and July 1 through December 31;
(b) Not exceed $4,000 per calendar year for a period beginning January 1 through December 31; and
(c) Be subject to a year-end cost settlement by the department.
1. To actual cost up to $4,000; or
2. To charges if lower; and
(d) Be made upon receipt of a claim to the department by an HCB waiver provider pursuant to 907 KAR 1:873.
(7) A minor home adaptation to an HCB recipient's home shall comply with 907 KAR 1:160;
(8) Payment for a minor home adaptation to an HCB recipient's home shall:
(a) Be made on the basis of actual billed charges; and
(b) Be for the actual cost of the minor home adaptation.
1. Including actual overhead cost which shall not exceed twenty percent of actual cost; and
2. Not to exceed a maximum of $500 per calendar year per HCB recipient beginning January 1.
(9) Be subject to a year-end cost settlement by the department.
1. To actual cost up to $500; or
2. To charges if lower.
(10) An attendant care service shall:
(a) Be reimbursed on a fee for service basis at the lower of reasonable cost or charge not to exceed the Medicaid upper limit of eleven (11) dollars and fifty (50) cents per unit of service; and
(b) Be provided in accordance with 907 KAR 1:680.
(10) Cost of an attendant care service shall be reported as a non-reimbursable cost in an HCB waiver provider's cost report.
(11) Cost of attendant care is not subject to year-end cost settlement.
(12) Attendant care shall be limited to forty-five (45) hours per week and travel time for an attendant shall not be included in a unit of service.

Section 4. Audits of HCWA Providers. HCWA cost reports shall be audited, as deemed necessary, by the department and to ensure that final payment to a provider is made in accordance with 907 KAR 1:031.

Section 5. Payment for an ADHC Service. (1) The department shall reimburse for a service provided in an ADHC center at the lesser of the usual and customary charges or at the upper limit per unit of service and payments shall be made directly to the ADHC center.
(2) The department shall not reimburse an ADHC center for more than two (2) basic units of service per day per HCB recipient.
(3) An ADHC basic daily service shall:
(a) Constitute care for one (1) HCB recipient;
(b) Be a minimum of three (3) hours per day for one (1) unit except if the HCB recipient has occupied the ADHC center for a minimum of two (2) hours prior to leaving the center due to a documented illness or emergency.
(c) Be a minimum of six (6) or more hours for two (2) units; and
(d) Not exceed two (2) units per day.

(4) An ADHC center may request a Level II reimbursement rate for an HCB recipient if the ADHC center meets the following criteria:
(a) The ADHC center has an average daily census limited to individuals designated as:
   1. HCB waiver;
   2. Private pay, or
   3. Covered by insurance; and
(b) The ADHC center has a minimum of eighty (80) percent of its individuals meeting:
   1. The criteria in paragraph (a) of this subsection; and
   2. The requirements for DD as established in Section 6 of this administrative regulation.

(5) If an ADHC center does not meet the Level II requirements as defined in Section 6 of this administrative regulation, the ADHC center shall be reimbursed at a Level I payment rate for the quarter for which the ADHC center requested Level II reimbursement.

(6) To qualify for Level II reimbursement, an ADHC center that was not a Medicaid provider before July 1, 2000 shall:
(a) Have an average daily census of twenty (20) individuals who meet the criteria established in subsection 4(b) of this section; and
(b) Have a minimum of eighty (80) percent of its individuals meet the definition of DD as established Section 6 of this administrative regulation.

(7) To qualify for reimbursement as an ancillary therapy a service shall be:
(a) Medically necessary;
(b) Ordered by a physician; and
(c) Provided by a qualified therapist as defined in 907 KAR 1:160 and limited to:
   1. Physical therapy;
   2. Occupational therapy; or
   3. Speech therapy.

(8) Ancillary therapy service reimbursement shall be:
(a) Per HCB recipient per encounter; and
(b) At the lesser of the usual and customary charges or up to the Medicaid upper limit of seventy-five (75) dollars per encounter per HCB recipient.

(9) A respite service shall:
(a) Be provided on site in an ADHC center;
(b) Be provided pursuant to 907 KAR 1:160;
(c) One (1) respite service unit shall equal one (1) hour to one (1) hour and fifty-nine (59) minutes; and
(d) The length of time an HCB recipient receives a respite service shall be:
   (a) Documented; and
   (b) Pursuant to the HCB recipient’s respite service hours limit established in 907 KAR 1:160.

(10) Payment for a covered respite service shall be reimbursed as established in Section 3(8) of this administrative regulation.

Section 5. Criteria for DD ADHC Level II Reimbursement. (1) To qualify for Level II reimbursement an ADHC center shall meet the requirements established in Section 5 of this administrative regulation; and

(2) Eighty (80) percent of its ADHC service individuals shall have:
(a) A substantial disability that shall have manifested itself before the individual reaches twenty-two (22) years of age;
(b) A disability that shall be attributable to mental retardation or a related condition which shall include:
   1. Cerebral palsey;
   2. Epilepsy;
   3. Autism; or
   4. A neurological condition that results in impairment of general intellectual functioning or adaptive behavior such as mental retardation which significantly limits the individual in two (2) or more of the following skilled areas:
      a. Communication;
      b. Self-care;
      c. Home-living;
      d. Social skills;
      e. Community use;
   f. Self direction;
   g. Health and safety;
   h. Functional academics;
   i. Leisure; or
   j. Work; and
(c) An adaptive behavior limitation similar to that of a person with mental retardation, including:
   1. A limitation that directly results from or is significantly influenced by substantial cognitive deficits; and
   2. A limitation that may not be attributable to only a physical or sensory impairment or mental illness.

Section 7. The Assessment Process for Level II ADHC Reimbursement. (1) To apply for Level II ADHC reimbursement, an ADHC center shall contact the PRO on the 15th of the month prior to the end of the calendar quarter for which they want Level II reimbursement.

(2) The PRO shall be responsible for randomly determining the date each quarter for conducting a Level II assessment of an ADHC center.

(3) In order for an ADHC center to receive Level II reimbursement:
(a) An ADHC center shall
   1. Document on a MAP-1021 form that it meets the Level II reimbursement criteria established in Section 5 of this administrative regulation;
   2. Submit a completed MAP-1021 form to the PRO at least ten (10) working days prior to the end of the current calendar quarter in order to be approved for Level II reimbursement for the following calendar quarter; and
   3. Attach to a MAP-1021 form a completed and signed copy of the "Adult Day Health Care Attending Physician Statement" for each individual listed on the MAP-1021 form;
(b) The PRO shall review the MAP-1021 form submitted by the ADHC center and determine if the ADHC center qualifies for Level II reimbursement; and
(c) The department shall review a sample of the ADHC center’s Level II assessments and validate the PRO's determination.

(4) If the department invalidates an ADHC center Level II reimbursement assessment the department shall:
(a) Reduce the ADHC center’s current rate to the Level I rate; and
(b) Recoup any overpayment made to the ADHC center.

(5) If an ADHC center disagrees with an invalidation of a Level II reimbursement determination, the ADHC center may appeal in accordance with 907 KAR 1:671, Section 8.

Section 8. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

(2) An appeal of a negative action regarding an ADHC service to an HCB recipient shall be in accordance with 907 KAR 1:563.

(3) An appeal of a negative action regarding Medicaid eligibility of an HCB recipient shall be in accordance with 907 KAR 1:560.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Map-1021, ADHC Payment Determination Form", August 2000 Edition;
(b) "Adult Day Health Care Attending Physician Statement", August 2000 Edition;
(c) "The Home Health and Home Community Based Cost Report", October 1999 Edition; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, KY 40601.
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 payment provisions applicable
to home and community-based waiver services provided to an
eligible recipient as an alternative to nursing facility care:

Section 1: Definitions. (1) "Adult day health care center" means a
center licensed in accordance with 907-KAR 20:060.
(2) "Department" means the Department for Medicaid Services or
its designee.
(3) "HGB" means home and community-based services.

Section 2: Coverage. (1) The department shall reimburse a par-
ticipating provider of home and community based (HGB) services for a
service rendered to an eligible Medicaid recipient who:
(a) Meets patient status criteria for nursing facility care; and
(b) Is prior authorized for the HGB service.
(2) Coverage provisions shall be in accordance with 907-KAR
1:160.

Section 3: Payment Amounts for Covered Services. (1) A provider
shall be paid using an interim payment method as defined in 907-KAR
1:002 with a year-end settlement to the lower of actual reasonable
costs or charges utilizing Medicare principles of reimbursement, as
established in 42 CFR 413 Subparts A through S for the following HGB serv-
ices:
(a) Assessment or reassessment;
(b) Case management;
(c) Homemaker services; and
(d) Personal care services;
(2) HGB services shall:
(a) Be subject to a prospectively set upper limit with the upper limit
set at 190 percent of the weighted median of the array of services
costs using the most recent cost report available as of May 91 with the
upper limit updated each July 1. This limit shall not apply until a pro-
vider has participated in the program for two (2) full agency fiscal
years. All other applicable limits shall apply.
(b) The interim rate shall be derived by applying a reduction factor
to current charges based on the difference between prior year allow-
able costs and charges. If a prior year’s costs and charges are not
available, the interim rate shall be at the department’s best esti-
mate of current costs—not to exceed charges—based on payments
made for similar services.
(3) Respite care covered services shall be:
(a) Limited to $4,000 per calendar year or $2,000 per six (6)
month period within that calendar year for the period beginning January
1 through June 30 or July 1 through December 31;
(b) The actual cost of the respite care services, plus actual overhead
costs incurred by the provider;
(c) Subject to a year-end settlement to actual cost, or charges if
lower, not to exceed the upper limit; and
(d) Payable to a home and community-based provider or licensed
adult day health care center, per recipient, subject to the limitations
established in paragraphs (a) through (c) of this subsection;
(4) Minor home adaptations shall be:
(a) Paid on the basis of actual billed charges;
(b) Paid at a maximum of $500 per calendar year for modifications;
(c) Appropriately prior authorized and provided prior to reim-
bursement;
(d) Paid for the actual cost of the minor home adaptations, plus
actual overhead costs incurred by the provider; and
(e) Subject to a year-end settlement to actual costs, or charges if
lower, not to exceed the upper limit;
(5) Payment for attendant care services shall be based on a fee
for service with a maximum fee set and reviewed periodically by the
department. Costs of attendant care services shall be reported as a
nonreimbursable cost in an HGB provider’s cost report and not subject
to cost settlement. For a person receiving attendant care, the total
waiver services cost shall not exceed the cost of an appropriate insti-
tutional alternative. Attendant care shall be limited to forty-five (45)
hours per week.
(6) Payment for adult day health care services:
(e) Payment shall be made directly to a licensed participating adult
day health care center on the basis of an interim rate with a year-end
cost settlement to the lower of actual reasonable allowable costs or
charges for adult day health care services;
(b) The maximum daily reimbursement rate for an adult day health
basic daily service unit shall be thirty-seven and one-half (37 1/2)
percent of the average nursing facility reimbursement rate for routine
services as established on July 1 of each year. An adult day health
basic daily service unit shall care for one (1) patient for a minimum of
three (3) hours per day up to a maximum of two (2) units which is six
(6) or more continuous hours;
(c) Payment for therapy services shall not exceed eighty (80)
percent of the approved maximum reimbursement rate for therapy
services under the home health program.

Section 4: A home health agency providing HGB services to an
eligible Kentucky Medicaid recipient shall comply with the provisions
established in 907-KAR 1:050 and 907-KAR 1:160.

Section 5: An audit of facility records shall be performed by the
department as deemed necessary by the department to ensure that
final payment is made in accordance with the payment provisions
established in this administrative regulation.

Section 6: Incorporation by Reference. (1) "Home and Community
Based-Adult Day Health Reimbursement Manual", Department for
(2) It may be inspected, copied, or obtained at the Department for
Medicaid Services, 275 East Main Street, Third Floor East, Frankfort,
Kentucky, 40621; Monday through Friday, 8:00 a.m to 4:30 p.m.

DENNIS BOYD, Commissioner
JIMMY D. HELTON, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at noon
PUBLIC HEARING: A public hearing on this administrative regul-
ation shall be held on December 21, 2000 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 December 14, 2000,
five workdays prior to the hearing, of their intent to attend. If no notifi-
cation of intent to attend the hearing is received by that date, the
hearing may be canceled. The hearing is open to the public. Any per-
son who attends will be given an opportunity to comment on the pro-
posed administrative regulation. A transcript of the public hearing will
not be made unless a written request for a transcript is made. If you do
not wish to attend the public hearing, you may submit written com-
ments on the proposed administrative regulation. Send written notifi-
cation of intent to attend the public hearing or written comments on the
proposed administrative regulation to: Jill Lewis, Cabinet Regulation
Coordinator, Cabinet for Health Services, Office of the Counselor, 275
East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905,
(502) 564-7737 (Fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Agency Contact Person: Sharon Rodriguez
(1) Provide a brief summary of:
(a) What this administrative regulation does; this administrative
regulation establishes the reimbursement methodology for Home and
Community Based (HCB) waiver services and Adult Day Health Care
(ADHC) services.
(b) The necessity of this administrative regulation: This administra-
tive regulation is necessary in order to reimburse HCB waiver and
ADHC service providers for services provided to Medicaid recipients
and to thus ensure that Medicaid recipients receive HCB waiver and
ADHC services.
(c) How this administrative regulation conforms to the content of the
authorizing statutes: This administrative regulation establishes
reimbursement for HCB waiver and ADHC services. Reimbursement of
those services falls within the jurisdiction of KRS 194A.030 and
KRS 194A.050 which grant DMS and the Cabinet for Health Services
the authority promulgate administrative regulations on the subject of
HCB waiver and ADHC reimbursement.

(c) How this administrative regulation currently exists or will assist in the effective administration of the statutes: This administrative regulation will, in accordance with the authorizing statutes, establish a reimbursement methodology for HCB waiver and ADHC service providers and thus provide HCB waiver and ADHC services to Medicaid recipients as 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 administrative regulation establishes a new reimbursement methodology for ADHC services and establishes a reimbursement rate for ADHC service recipients who meet the criteria of being developmentally disabled (DD).

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are being made as a result from an agreement between the Department for Medicaid Services (DMS) and the ADHC provider community to establish a new reimbursement methodology for ADHC services and to establish a reimbursement rate for ADHC services provided to recipients who meet the criteria of being DD. The amendments will allow ADHC service providers to be adequately reimbursed and thus not jeopardize their ability to provide services to Medicaid recipients.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to this administrative regulation establish a new and more equitable reimbursement for ADHC services. Reimbursement of those services falls within the jurisdiction of KRS 194A.030 and 194A.050.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will assist in the effective administration of the statutes by implementing a more equitable reimbursement for ADHC service providers and will do so in accordance with the authorizing statutes, KRS 194A.030 and 194A.050.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The changes in this administrative regulation will affect only 85 ADHC services providers.

(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: DMS estimates ADHC services will be beneficially impacted by the implementation of this administrative regulation because they will be reimbursed more equitably for ADHC services. DMS conferred with the ADHC provider community concerning this new reimbursement methodology and they endorsed it.

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

(a) Initially: DMS estimates SFY 2001 expenditures for HCB waiver services to be $57 million with ADHC service expenditures equaling $12.2 million, rendering this administrative regulation budget neutral. However, since utilization of this service is increasing, the actual cost may be higher.

(b) On a continuing basis: DMS estimates an annual expenditure increase of 3.1% due to inflation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, and state matching funds from General Fund and Restricted Fund appropriations are the funding sources to be used to implement and enforce this administrative regulation.

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

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

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Behavioral Health Programs
(Amendment)


RELATES TO: KRS 205.520, 42 CFR 431.615, 440.130, 447 Subpart B, 42 USC 1396a, d, 1396s


NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 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. This administrative regulation provides for coverage and payments for Impact Plus services provided through an agreement with the state Title V agency, the Department for Public Health.

Section 1. Definitions. (1) "Behavioral health professional" means a:

(a) Psychiatrist;
(b) Physician licensed in Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties;
(c) Psychologist licensed and functioning in accordance with KRS 319.060;
(d) Psychologist with autonomous functioning, certified and functioning in accordance with KRS 319.065;
(e) Clinical social worker licensed and functioning in accordance with KRS 335.100;
(f) Advanced registered nurse practitioner licensed and functioning in accordance with KRS 314.042;
(g) Marriage and family therapist licensed and functioning in accordance with KRS 335.300;
(h) Professional counselor certified and functioning in accordance with KRS 335.500;
(i) Professional art therapist certified and functioning in accordance with KRS 309.130; or
(j) Alcohol and drug counselor certified and functioning in accordance with KRS 309.080.

(2) "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and functioning in accordance with KRS 319.065;
(b) Psychological associate certified and functioning in accordance with KRS 319.064;
(c) Marriage and family therapist associate permitted and functioning in accordance with KRS 335.332;
(d) Social worker certified and functioning in accordance with KRS 335.080; or
(e) Professional counselor associate certified and functioning in accordance with KRS 335.505.

(3) "Behavioral health organization" means a:

(a) Hospital licensed and functioning in accordance with 902 KAR 20:009, 902 KAR 20:012 and 902 KAR 20:016 or 902 KAR 20:170 and 902 KAR 20:180;
(b) Community mental health center licensed and functioning in accordance with 902 KAR 20:391;
(c) Child-caring facility licensed and functioning in accordance with 922 KAR 20:130;
(d) Child-placing facility licensed and functioning in accordance with 922 KAR 1:310;
(e) Organization accredited by the Joint Commission for the Accreditation of Healthcare Organizations or the Council on Accreditation.
of Services for Families and Children; or

(1) Facility, agency, institution, organization, or business that is approved by the Department of Community Based Services and Mental Health and Mental Retardation Services to provide a service covered by this administrative regulation using standards of participation approved by the department.

(4) "Collaborative service plan" means an individualized written plan that specifies a therapeutic intervention and other services that are required by a recipient and that meets the requirements of Section 5 of this administrative regulation.

(5) "Community mental health center" means an organization licensed and functioning in accordance with 902 KAR 30:961.

(6) "Department" means the Department for Medicaid Services or its designated agent.

(7) "IMPACT Plus" means a program of community based behavioral health services provided through an agreement between the department and the Department for Public Health.

(8) "Medically necessary" or "medical necessity" means that a covered benefit shall be:

(a) Provided in accordance with 42 CFR 440.230;
(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;
(c) Clinically appropriate in terms of amount, scope, and duration based on generally accepted standards of good medical practice;
(d) Provided for a medical reason rather than primarily for the convenience of the recipient, caregiver, or the provider;
(e) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may for practical purposes be safely and effectively provided;
(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and
(g) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 USC 1396d(f), and 42 CFR 441 Subpart B, for recipients under twenty-one (21) years of age.

(9) "Professional equivalent" means a person employed by a community mental health center who:

(a) Has received a degree in an identical field of psychology, sociology, social work or human services as determined by the department with the following combination of education and experience:

1. Bachelor's degree and three (3) years full-time supervised experience;
2. Master's degree and six (6) months full-time supervised experience; or
3. Doctorate degree and no experience;
(b) Has supervised experience in the delivery of therapeutic rehabilitation; individual, family and collateral outpatient therapies; or intensive in-home services; and
(c) Has been approved as meeting requirements for reimbursement by the department prior to July 1, 2000.

(10) "Recipient" means a person who has applied for medical assistance and has been determined to meet applicable conditions for eligibility pertaining to Kentucky's Medicaid Program.

(11) "Subcontractor" means a person, a facility, agency, institution, organization, or business that is subcontracted by the Department for Community Based Services or the Department for Mental Health and Mental Retardation Services to provide a service in accordance with this administrative regulation.

(12) "Targeted case management service" means a service provided pursuant to 42 USC 1396m.

(13) "Title V agency" means the Department for Public Health.

Section 2. Title V Interagency Agreement. Services provided pursuant to Section 6 of this administrative regulation shall be in accordance with an interagency agreement between the department and the Title V agency.

Section 3. Eligibility. A recipient under twenty-one (21) years of age shall be eligible to receive a medically-necessary service covered in Section 6 of this administrative regulation if the recipient:

(1) Is in the custody or under the supervision of the state or at risk of being in the custody of the state; and
(2) Meets one (1) of the following:

(a) Is in a hospital or psychiatric residential treatment facility and would meet the criteria of Section 4 of this administrative regulation if discharged; or
(b) Is at risk of institutionalization as specified in Section 4 of this administrative regulation.

Section 4. Criteria for At Risk of Institutionalization. (1) A recipient shall be at risk of institutionalization if the recipient:

(a) Has been individually assessed face-to-face by a behavioral health professional or a behavioral health professional under clinical supervision and determined to require immediate short-term residential crisis stabilization as the sole service in accordance with Section 6(14) of this administrative regulation; or
(b) Has a severe, persistent Axis I diagnosis other than dementia or substance abuse, established in the "The Diagnostic and Statistical Manual of Mental Disorders, fourth edition" DSM IV-TR, Copyright 1994, American Psychiatric Association published by the American Psychiatric Association;

2. Has documentation of a severe behavioral health problem that has persisted in the home, school, or community setting during the past six (6) months; and

3. Requires a coordinated plan of medically necessary community based behavioral health services to prevent worsening of a behavioral health condition that may result in institutionalization for behavioral health services.

(2) A recipient shall be considered no longer at risk of institutionalization and not eligible for IMPACT Plus services if:

(a) A determination has been made by a behavioral health professional or a behavioral health professional under clinical supervision, that the only service necessary was immediate short-term residential crisis stabilization, a period of residential crisis stabilization was provided, and the recipient no longer needs such service, or ten (10) days of residential crisis stabilization has been provided, whichever occurs first; or
(b) The recipient no longer meets the criteria specified in subsection (1)(b) of this section.

Section 5. Standards for a Covered Service. (1) The department shall prior authorize one (1) unit of a targeted case management service upon determination by the department that a recipient meets the eligibility requirements of Section 3 of this administrative regulation.

(2) A service covered in accordance with Section 6 of this administrative regulation shall be prior authorized by the department based on documentation of medical necessity.

(3) A covered service shall be provided in the least restrictive setting appropriate for the recommended treatment or care.

(4) A covered service shall be provided by a qualified behavioral health professional, a behavioral health professional under clinical supervision, or a behavioral health organization.

(5) A therapeutic group residential service shall not be reimbursed outside the geographical boundaries of Kentucky unless requirements listed in 907 KAR 3:035 have been met.

(6) Except for immediate residential crisis stabilization and a single unit of targeted case management approved upon eligibility determination, a covered service shall be provided in accordance with a collaborative service plan that:

(a) Supports the level and type of care to be provided;
(b) Is recommended by a team in a meeting that shall include:

1. The parent, guardian, or caregiver of the recipient if the recipient is under eighteen (18) years of age;
2. A clinical professional that shall be one of the following:
   a. A behavioral health professional;
   b. A behavioral health professional under clinical supervision; or
   c. A community mental health center professional equivalent who is currently providing therapy services for the individual recipient;
3. A provider of targeted case management services as specified in Section 6(1) of this administrative regulation; and
4. One (1) of the following:
   a. A representative of the local education authority;
   b. A representative of the Department for Community Based...
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9. A representative of the Department for Juvenile Justice; or
10. Another individual or a representative of a child serving organization that has been involved with the individual recipient and who does not employ a person identified in this subsection;

(c) Describes a coordinated plan of medically necessary community based behavioral health services, that specifies a modality, frequency, intensity and duration of services, sufficient to maintain the recipient in the community, and

(d) Identifies the following:
1. A program of therapies, activities, interventions or experiences designed to accomplish the plan;
2. The behavioral health professional, behavioral health professional under clinical supervision or the professional equivalent who shall manage the continuity of care;
3. Interventions by caregivers in the home, school, and community setting that support a recipient’s ability to be maintained in the community;
4. Identified behavioral, social, and physical problems with interventions and objective, measurable goals;
5. Discharge criteria for each of the requested services that specify the client behavioral indicators for discharge from the service;
6. A crisis action plan that progresses through a continuum of care that begins with the use of natural supports and progresses through low intensity services to high intensity services or inpatient services; and
7. A plan for transition to a lower intensity of services and for discharge from IMPACT Plus services.

Section 6. Covered Services. (1) Targeted case management.
(a) A targeted case management service shall be an activity that assists a recipient in accessing needed medical, social, educational, and other support services that shall include the following:
1. A case management assessment that shall include:
a. Documentation of a multiaxial assessment that includes descriptions of the behaviors or symptoms upon which the diagnoses are based;
b. Documentation of the date of a recipient's initial diagnosis including the professional and agency providing diagnosis;
c. Description of the impact of the diagnosis over time; and
d. Description of all systems that the recipient needs coordination of services;
2. Assistance in developing, coordinating, and accessing services in the collaborative service plan;
3. Coordination of collaborative team meetings to develop, modify, and review a collaborative service plan;
4. Coordination of the implementation of a collaborative service plan;
5. Five (4) documented contacts per month, made on separate days, including one (1) face-to-face contact with a recipient and one (1) face-to-face contact with a parent or guardian or primary caregiver.

Section 7. Covered Services. (1) Program of services.
(a) The Department for Community Based Services (DCBS) shall be responsible for providing the following services:
3. An administrative activity associated with a Medicaid eligibility determination or application processing;
4. Institutional discharge planning;
5. A transportation service or
6. A duplicate payment made to another public agency or private entity for the same purpose.

(c) A provider of Medicaid reimbursed targeted case management services, excluding the Department for Community Based Services, shall not be reimbursed for a both targeted case management service and an IMPACT Plus service provided to a recipient determined eligible for IMPACT Plus services on or after April 15, 2001.

(d) Beginning October 1, 2001, a provider of Medicaid reimbursed targeted case management services, excluding the Department for Community Based Services, shall not be reimbursed for both a targeted case management service and an IMPACT Plus service provided to a recipient determined eligible for IMPACT Plus services prior to or on April 14, 2001.

(e) A provider of targeted case management shall be a person who is employed by:
1. The Department for Community Based Services (DCBS) as a case manager or social worker providing services to an individual in the custody of or under the supervision of DCBS;
2. A community mental health center as a provider of targeted case management services in accordance with 907 KAR 1:525; or
3. A behavioral health organization if the person has:
   a. A bachelor of arts or sciences degree in a behavioral science from an accredited institution. A behavioral science shall include psychology, sociology, social work, human services, or special education;
   b. Completed one (1) year of postgraduate employment providing case management services or working directly with children. A master's degree in a behavioral science can substitute for the one (1) year of experience;
   c. Completed a case management training program provided by the Department for Mental Health and Mental Retardation Services within six (6) months of the date of employment;
   d. Clinical supervision at least twice per month, with individual face-to-face supervision at least once per month by a behavioral health professional, a behavioral health professional under clinical supervision, or a case manager who meets the requirements of this subparagraph and has two (2) years of case management experience.

(2) A behavioral health evaluation shall:
(a) Be a face-to-face evaluation of a recipient, provided in accordance with the recipient's collaborative service plan, to assess a behavioral health disorder and shall include at a minimum:
1. A multiaxial assessment that includes descriptions of the behaviors or symptoms upon which any diagnosis is based;
2. Documentation of the date of a recipient's initial diagnosis including the professional and agency providing diagnosis;
3. A description of the impact of the diagnosis over time; and
4. A description of all systems that the recipient needs coordination of services;
(b) Be provided by a behavioral health professional.
(3) An individual therapy service shall be:
(a) A face-to-face behavioral health therapy service provided in accordance with a recipient's collaborative service plan and provided to a recipient individually; and
(b) Provided by a behavioral health professional or a behavioral health professional under clinical supervision.

(4) A group therapy service shall be:
(a) A face-to-face behavioral health therapy service provided in accordance with a recipient's collaborative service plan and provided to a recipient in a group setting not to exceed eight (8) individuals; and
(b) Provided by a behavioral health professional or a behavioral health professional under clinical supervision.

(5) A collateral service shall be:
(a) A face-to-face behavioral health consultation or service planning meeting with a parent, legal representative, school personnel, or other person with custodial control or supervision of the recipient;
(b) Provided in accordance with a recipient's collaborative service plan or as part of the service planning process; and
(c) Provided by a behavioral health professional or a behavioral health professional under clinical supervision.

(6) A therapeutic child support service shall be;
(a) A therapeutic service provided in accordance with a recipient’s collaborative service plan to assist the recipient or the recipient’s family on behalf of the recipient, in understanding, training, identifying, or coping with the recipient’s behavioral health disorder;

(b) Provided directly to a recipient or family and shall include:
   1. Therapeutic intervention and support provided to a recipient transitioning to adulthood including:
      a. Assessment of a recipient’s aptitude for vocational or skill training;
      b. Monitoring of a recipient’s progress toward transition; or
      c. Assistance with developing skills and emotional readiness for an independent living setting.
   2. Behavior management skills training including:
      a. Therapeutic intervention and support provided to a parent, guardian, or caregiver in implementing a behavioral management plan;
      b. Individual instruction for a recipient or parent, guardian, or caregiver on recognizing or coping with a recipient’s disruptive behavior; and
      c. Training a recipient and parent, guardian, or caregiver about appropriate behavior and supportive adult intervention; or

3. In-home support including:
   a. Assessment of a recipient’s living situation;
   b. Consultation in a recipient’s home with a recipient or a recipient’s parent, guardian, or caregiver;
   c. Training of a parent, guardian, caregiver, or a family member in therapeutic techniques; and
   d. Mentoring with a recipient to model appropriate social behavior or to assist a recipient with building social skills; and

   (c) The provider of a therapeutic child support service shall be a person who is employed by a behavioral health organization and:
   1. Meets the following minimum qualifications for a professional providing a therapeutic support service:
      a. Has a bachelor’s degree from an accredited academic institution or be a registered nurse licensed in accordance with KRS 314.041;
      b. Has one (1) year experience working with children who have behavioral health needs. A master’s degree from an accredited academic institution shall substitute for the required experience;
      c. Has sixty (60) hours of training in children’s behavioral health or three (3) college level credits from an accredited academic institution in courses related to child development or services to children;
      d. Is directly supervised by a behavioral health professional or a behavioral health professional under clinical supervision; and
      e. Receives clinical supervision at least twice per month, with individual face-to-face clinical supervision at least once per month;
   2. Meets the following requirements for a paraprofessional providing a therapeutic support service:
      a. Has a high school or general equivalency diploma;
      b. Has one (1) year of documented supervised experience working in a human service program or one (1) year of college;
      c. Receives clinical supervision at least twice per month, with individual face-to-face clinical supervision at least once per month from a behavioral health professional, behavioral health professional under clinical supervision, or a person who meets the requirements in paragraph (c) of this subsection as a qualified professional for therapeutic support services; and
      d. Has six (6) months documented experience working with children in a supervised program setting if the therapeutic support service is provided one (1) on one (1) to a recipient outside a directly supervised setting.

   (7) A parent-to-parent support service shall be:
   a. Provided face-to-face to a recipient’s parent, guardian, or caregiver and shall consist of:
      1. Provision of information about IMPACT Plus services including how to effectively participate in the service planning process and how to access needed services, including emergency services;
      2. Assistance in advocating on behalf of the recipient;
      3. Provision of information regarding the nature, purpose, and anticipated benefits obtained from accessing targeted case management and other IMPACT Plus services;
      4. Therapeutic intervention and support provided to a parent, guardian, or caregiver in implementing a behavioral management plan;
      5. Assistance in understanding how to implement and how to document implementation of a recipient’s behavior management plan;
      6. Provision of information concerning the scope of responsibility of the principal child-serving agencies;
      7. Assistance in the establishment and maintenance of linkages with formal and informal supportive services;
      8. Assistance in the establishment of and sustenance of support groups for parents, guardians, and caregivers of recipients; or
      9. Assistance in the development of and implementation of a plan to transition the recipient from IMPACT Plus services;

   (b) Provided in accordance with a recipient’s collaborative service plan by a parent of a child who has a behavioral health disorder and who has received at least one (1) state funded service for that child’s disability and who:
   1. Is employed by a behavioral health organization;
   2. Is approved by the Department for Mental Health and Mental Retardation Services following completion of ten (10) hours of initial and continuing annual training;
   3. Is directly supervised by a behavioral health professional, behavioral health professional under clinical supervision, or a person who meets the requirements in subsection (6)(c) of this section to provide a professional support service; and
   4. Receives clinical supervision at least twice per month, with individual face-to-face clinical supervision at least once per month from a behavioral health professional or behavioral health professional under clinical supervision, or a person who meets the requirements in subsection (6)(c) of this section as a qualified professional for therapeutic support services; and

   (c) Provided by a person not related to or living with the recipient receiving the parent to parent support service;

   (d) An after-school or summer program service shall:
      a. Consist of a structured program of individual and group therapeutic activities that focus on the use of appropriate behaviors and social skills in group activities with other children that includes the following:
         1. Individual and group therapies;
         2. Behavior management and social skills training;
         3. Independent living skills training for recipients fourteen (14) years of age and older;
         4. Scheduled activities to promote parent or caregiver involvement and to empower the family to meet the individual’s needs; and
         5. The development with the individual and parent or caregiver of a crisis plan for nonprogram hours;

   (b) Be provided in accordance with the recipient’s collaborative service plan;

   (c) Have a minimum recipient to staff ratio of four (4) children to one (1) staff. All therapy activities shall be led by a behavioral health professional or behavioral health professional under clinical supervision; and

   (d) Be provided by a behavioral health professional or a behavioral health organization and shall have daily on-site supervision by a behavioral health professional or a behavioral health professional under clinical supervision;

   (9) A day treatment service shall:
      a. Consist of an organized behavioral health program of treatment and rehabilitative services;

      (b) Have unified policies and procedures approved by the local education authority and the provider of the day treatment service that shall address program philosophy, admission and discharge criteria, admission and discharge process, staff training and integrated case planning and include the following:
         1. Individual and group therapies;
         2. Behavior management and social skill training;
         3. Independent living skill training for recipients fourteen (14) years of age and older;
         4. Scheduled activities to promote parent or caregiver involvement and to empower the family to meet the recipient’s needs;
         5. Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and
         6. The development with the individual and parent or caregiver of a crisis plan for nonprogram hours.

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(c) Be provided:
1. In collaboration with the special education services or other available education services of the local education authority;
2. On school days or during scheduled breaks;
3. In coordination with the recipient's individual educational plan and not as homebound instruction;
4. By a behavioral health organization.
5. Under the supervision of a behavioral health professional or a behavioral health professional under clinical supervision;
6. Through a linkage agreement with the local education authority that specifies the responsibility of the authority and the provider for:
   a. Appropriately licensed teachers and provision for their professional development;
   b. Educational supports (classroom aides and textbooks);
   c. Educational facilities;
   d. Physical education and recreational therapies;
   e. Transportation; and
   f. Transition planning.
7. In accordance with a recipient's collaborative service plan;
8. Have a minimum recipient to staff ratio of four (4) children to one (1) staff. All therapy activities shall be led by a behavioral health professional or behavioral health professional under clinical supervision; and
(10) A partial hospitalization service shall:
(a) Consist of a therapeutic environment with an organized, intensive program that provides for the comprehensive assessment, diagnosis, and treatment of complex behavioral health needs that shall:
   1. Have unified policies and procedures that address program philosophy, admission and discharge criteria, admission and discharge process, staff training and integrated care planning;
   2. Offer less than twenty-four (24) hour daily care five (5) to seven (7) days per week;
   3. Include the following:
      a. Daily oversight and management by a psychiatrist that includes daily communication with staff delivering direct services and face-to-face contact with the recipient one (1) or more times per week;
      b. Continuous nursing coverage;
      c. Multidisciplinary treatment team;
      d. Rehabilitation therapy;
      e. Individual and group therapies;
      f. Medication evaluation, education, and management;
      g. Behavior management and social skills training;
      h. Treatment-based schooling provided by the local education authority as required by law;
      i. Scheduled activities that promote family involvement; and
      j. The development with a recipient and a parent or caregiver of a crisis plan for nonprogram hours;
(b) Be provided by a hospital licensed in accordance with 902 KAR 20:009 and 902 KAR 20:016 or 902 KAR 20:170 or a community mental health center. A provider shall have a linkage agreement with the local education authority that specifies the responsibility of the authority and the provider for:
   1. Appropriately licensed teachers and provision for their professional development;
   2. Educational supports (classroom aides and textbooks);
   3. Educational facilities;
   4. Physical education and recreational therapies;
   5. Transportation; and
   6. Transition planning.
(c) Be provided in accordance with a collaborative service plan;
(d) Have a minimum recipient to staff ratio of four (4) children to one (1) staff. All therapy activities shall be led by a behavioral health professional or behavioral health professional under clinical supervision; and
(e) Not include services covered by 907 KAR 1:715.
(11) An intensive outpatient behavioral health service shall:
(a) Consist of a structured behavioral health program of individual and group therapeutic activities provided in accordance with a recipient's collaborative service plan;
(b) Be provided by a provider of an intensive outpatient behavioral health service that shall have a minimum recipient to staff ratio of four (4) children to one (1) staff;
2. A facility licensed as a nonmedical and nonhospital-based alcohol or other drug abuse treatment program provider in accordance with 908 KAR 1:370 within the scope of its practice.

14. A residential crisis stabilization service shall:
(a) Consist of a brief stay not to exceed ten (10) consecutive days in a therapeutic environment that has an organized, intensive program that provides for the comprehensive assessment, diagnosis, and treatment of complex behavioral health needs and shall include:
   1. A face-to-face behavioral health assessment by a behavioral health professional or a behavioral health professional under clinical supervision;
   2. Individual and group therapies and other behavioral health interventions necessary to stabilize the recipient; and
   3. Discharge planning to link a recipient with community services and supports;
(b) Be provided by:
   1. A child-caring facility licensed in accordance with 922 KAR 1:300;
   2. A hospital licensed in accordance with 902 KAR 20:005 and 902 KAR 20:016 or 902 KAR 20:170; or
   3. A community mental health center;
(c) Have a behavioral health professional with full-time clinical responsibility for the residential crisis stabilization program; and
(d) Have a behavioral health professional or a behavioral health professional under clinical supervision that shall have, daily, face-to-face contact with the recipient. There shall be a behavioral health professional or a behavioral health professional under clinical supervision on site or on call at all times.

15. A wilderness camp service shall:
(a) Consist of a structured, overnight program in an outdoor environment, of individual and group therapeutic activities that build social competencies, increase self-esteem, and assist recipients to learn and practice skills that provide for greater control of personal behaviors;
(b) Be provided by a child-caring facility licensed in accordance with 922 KAR 1:300;
(c) Have continuous on-site supervision by a behavioral health professional or a behavioral health professional under clinical supervision; and
(d) Be provided in accordance with a recipient's collaborative service plan.

Section 7. Provider Qualifications and Conditions for Participation. The following provider qualifications and conditions for participation shall apply for services provided in accordance with this administrative regulation.

1. The Title V agency shall provide a service either directly or through an agreement with:
(a) The Kentucky Department for Community Based Services as the state agency responsible for the provision of child and adult protective services; or
(b) The Kentucky Department for Mental Health and Mental Retardation Services as the agency responsible for oversight of mental health and substance abuse services in the state.

2. A service provided directly by the Title V agency, the Department for Community Based Services, the Department for Mental Health and Mental Retardation Services, or a subcontractor shall meet the requirements established in this administrative regulation.

3. A subcontractor or person employed by a subcontractor to provide services pursuant to this administrative regulation shall not:
(a) Have been convicted of a felony offense;
(b) Have been convicted of a misdemeanor offense involving an illegal substance within the five (5) years previous to becoming a subcontractor or person employed by a subcontractor to provide services;
(c) Have been convicted of or have entered a plea of guilty to, a sex crime as defined in KRS 17.165;
(d) Have been convicted as or have entered a plea of guilty as a "violent offender" as defined in KRS 17.165; or
(e) Have been the perpetrator identified in a report of abuse, neglect, or exploitation of a person that has been substantiated by the Department for Community Based Services.

4. A provider or subcontractor shall maintain medical records that shall:
(a) Be current, readily retrievable, organized, complete, and legible, and shall reflect sound medical recordkeeping practice;
(b) Include a written record that is dated and signed for each individual encounter that shall include:
   1. The collaborative service plan dated and signed by members of the team specified in Section 5(6)(b) of this administrative regulation; and
   2. Documentation of a service that shall include:
      a. A written description of the service that includes how the service addresses the collaborative service plan goals and any progress made by the recipient; and
      b. The date of the service;
      c. The number of units of the service or starting and ending times;
      d. The place of the service;
      e. The name and qualification of the person who provided the service; and
      f. The signature and date of signature of the person who provided the service and the person providing clinical supervision if required for the service;
(c) Be kept in a locked file and treated as confidential in accordance with KRS 194A.060, 434.840-434.860, 422.317 and 42 CFR 431 Subpart F; and
(d) Be furnished upon request and made available for inspection and copying by department personnel or other agencies in accordance with Section 8 of this administrative regulation.

5. A provider or subcontractor of a targeted case management service shall maintain medical records that shall document provision of a case management service that shall include:
(a) A written targeted case management assessment in accordance with Section 6 of this administrative regulation;
(b) A contact list that includes the date, place, and content of contacts made with the recipient, parent, guardian, or caregiver, and other members of the team described in Section 5(6)(b) of this administrative regulation; and
(c) A monthly case management summary that includes:
   1. Progress by the recipient in accessing services in the collaborative service plan;
   2. The recipient's progress toward the goals specified in the collaborative service plan and an explanation of failure to progress;
   3. The recipient's response to services provided pursuant to the collaborative service plan and a change in services to address failure to progress or problems in response;
   4. Documentation of the implementation of subsection (7) of this section;
   5. Documentation of permission by the parent or guardian to release and receive information about the recipient in accordance with applicable state and federal law;
   6. Documentation of a referral for a service identified in a collaborative service plan in which the person providing a targeted case management service participated; and
   7. A plan for delivery of targeted case management services for the following month.

6. A subcontractor as part of an application process to provide services shall provide:
(a) Verification of a state police records check or a signed release to enable the Department for Community Based Services or the Department for Mental Health and Mental Retardation Services to request a state police records check and payment for the cost of obtaining the records check; and
(b) A listing of the services the subcontractor intends to provide that shall describe for each service:
   1. Staff qualifications, supervision, and training; and
   2. Oversight of staff and services by a behavioral health professional.

7. The Departments for Community Based Services and Mental Health and Mental Retardation Services shall establish and annually evaluate a quality improvement program approved by the department that monitors and evaluates, on a continuing basis, access, continuity of care, and behavioral health care outcomes relating to a service provided directly or by a subcontractor in accordance with this administrative regulation.

(a) The monitoring and evaluation shall be based upon:
   1. A recipient's demographic characteristics, risk factors, func-
ional status, comorbidities and behavioral health status; 2. A recipient's access to a service; 3. Utilization and cost of a service; 4. A recipient's satisfaction with a service; and 5. Adverse incidents and complications. (b) Behavioral health outcomes shall include: 1. Prevention of behavioral disability and restoration of an individual to the highest possible functioning level; and 2. Provision of a service in the least confining setting appropriate for the required treatment or care.

(c) A subcontractor of the Department for Community Based Services or the Department for Mental Health and Mental Retardation Services shall:

1. Measure and report an outcome of the provision of a service;
2. Have a program for the improvement of the quality of a service; and
3. Monitor the utilization of a service.

(b) A recipient shall be informed of the right to select, and shall select a subcontractor to provide a service covered by this administrative regulation from a list of subcontractors approved by the Department for Community Based Services or the Department for Mental Health and Mental Retardation Services to provide the service. A parent, custodian, parent exercising custodial control or supervision as defined in KRS 600.020, or agency with legal responsibility for an individual by virtue of voluntary commitment or an emergency or temporary custody order shall be allowed to act on behalf of the recipient in selecting a subcontractor for services.

(9) A provider or subcontractor shall maintain documentation of services provided and billed for a minimum of five (5) years or until an audit dispute or issue is resolved, whichever is longer.

Section 8. Access to Records, Providers, and Recipients. (1) A provider or subcontractor shall provide to the department or a representative of an agency or office identified in subsection (4) of this section, upon request:

(a) Medical records and other information maintained by the provider to document the service provided;
(b) Information regarding a payment claimed by the provider for furnishing a service; and
(c) Information documenting the cost of the service.

(2) The department shall have the right to inspect medical and other records on site or to require the provider or subcontractor to provide written or electronic documentation for review as determined to be appropriate by the department.

(3) The department shall have the right to interview recipients, parents, guardians, primary caregivers or current or previous provider or subcontractor staff with regard to a service provided in accordance with Section 6 of this administrative regulation.

(4) Access to provider or subcontractor records relating to a service provided shall be provided to:

(a) A representative of the United States Department of Health and Human Services;
(b) The United States Attorney General's Office;
(c) The state Attorney General's Office;
(d) The state Auditor's Office;
(e) The Office of the Inspector General; or
(f) The department.

Section 9. Reimbursement. Reimbursement shall be the documented costs for the direct provision of the service as specified in this section. The department shall not reimburse administrative and indirect overhead costs of the Departments for Public Health, Mental Health and Mental Retardation Services, or Community Based Services.

(1) Payment shall be based on actual expenditures incurred for providing a service by the Title V agency, the Department for Mental Health and Mental Retardation Services or the Department for Community Based Services.

(2) The Title V agency, the Department for Community Based Services and the Department for Mental Health and Mental Retardation Services shall maintain service and cost records to document that payments for services provided do not exceed cost.

(3) For a service provided through a subcontractor, the applicable state agency shall maintain records of a payment made to a subcontractor for a service provided to a recipient that shall include:

(a) A recipient's name;
(b) A recipient's Medicaid identification number;
(c) Date, service, and amount of payment for the service; and
(d) Information necessary for the accountable administration of the payment.

(4) The department shall not reimburse an after-school or a summer program service for a recipient residing in a therapeutic group residential setting.

(5) The payment rate for a service to be provided by a subcontractor shall be negotiated between the provider and the subcontractor.

(a) A negotiated rate for a subcontracted service shall not be effective unless approved by the Department for Medicaid Services.

(b) To facilitate the negotiated rate approval process, the Department for Medicaid Services' representative may participate directly in the negotiation process and review proposed subcontractor payment amounts prior to approval.

(c) Approval of a negotiated rate shall be requested in advance of the provision of a service. If it is urgent for a subcontractor to render a service prior to the Department for Medicaid Services' approval of a negotiated rate the subcontractor shall assume the risk of nonpayment. The subcontractor shall have thirty (30) calendar days to negotiate an approved rate before the service shall be considered a nonreimbursable service.

(d) A billable unit of service shall be:

(a) Fifteen (15) minutes for:
1. An individual therapy service;
2. A group therapy service; or
3. A collateral service;
(b) One (1) hour for:
1. A behavioral health evaluation;
2. A therapeutic child support service;
3. A parent to parent support service;
4. An after school or summer program service;
5. A day treatment service;
6. A partial hospitalization service; or
7. An intensive outpatient behavioral health service;
(c) One (1) day for:
1. A therapeutic foster care service;
2. A therapeutic residential care service;
3. A residential crisis stabilization service; or
4. A wilderness camp service;
(d) One (1) month for targeted case management.

(7) The following costs shall not be reimbursed:

(a) Room and board; and
(b) Educational, vocational or transportation services.

(8) Failure to comply with the requirements established in this administrative regulation in the provision of covered services shall subject the provider or subcontractor to recoupment by the department.

Section 10. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.


(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. "Department" means the Department for Medicaid Services.

(3) "Impact Plus" means the program of behavioral health services provided through an agreement with the state Title V agency;
(3) "Licensed practitioner of the healing arts" means a practitioner of the healing arts who is:
(a) Licensed in accordance with KRS 311:271; or
(b) Exempt from licensure pursuant to KRS 305:010(4).

(4) "Rehabilitative services" means medical or remedial services recommended by a physician or other licensed or certified practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of a behavior disability and restoration and maintenance of a recipient to his highest possible functional level.

(5) "Targeted case management services" means a set of activities which assist an individual in accessing needed medical, social, educational, and other support services pursuant to 42 USC 1395o.

(6) "Title V agency" means the Department for Public Health.

Section 2. Intergency Agreement: Services provided pursuant to Section 3 of this administrative regulation shall be in accordance with an interagency agreement between the department and the Title V agency.

Section 3. Coverage: Services provided shall be those that meet the terms of the agreement between the department and the Title V agency, which are appropriate for the reduction of behavioral disability and restoration of a recipient to his highest possible functional level, and which shall be within the following general areas:

(1) Targeted case management services provided to:
(a) A Medicaid-eligible child under the age of twenty-one (21) who meets the conditions and circumstances of the Department for Community-Based Services established in 905 KAR Chapter 1 to be defined as a child:
   1.a. In the custody of the state;
   b. Under the supervision of the state;
   c. At risk of being in the custody of the state; and
   2.a. In an institution;
   b. At risk of institutionalization;
(b) A Medicaid eligible child under age twenty-one (21) who is:
   1. In an institution;
   2. At risk of institutionalization;
(c) A service covered as a targeted case management service:
   (a) May include:
      1. Assessment of family strengths and needs;
      2. Assistance in developing, coordinating, and accessing services in the individual service plan or family support plan;
      3. Coordination of interagency team meetings to develop a family support plan;
      4. Facilitation of the implementation of a child and family service plan;
      5. Monitoring progress and performing advocacy to assure appropriate, timely, and productive treatment and support services; or
      6. Participation in the development of other human service plans for the child; and
   (b) Shall not include:
      1. The actual provision of treatment;
      2. An outreach activity to a potential client;
      3. An administrative activity associated with a Medicaid eligibility determination or application processing;
      4. Institutional discharge planning;
      5. A transportation service; or
      6. A duplicate payment made to another public agency or private entity for the same purpose.

(3) Rehabilitative services provided to:
(a) A Medicaid-eligible child under the age of twenty-one (21) who meets the conditions and circumstances of the Department for Community-Based Services established in 905 KAR Chapter 1 to be defined as a child:
   1.a. In the custody of the state;
   b. Under the supervision of the state; or
   c. At risk of being in the custody of the state; and
   2.a. In an institution;
   b. At risk of institutionalization;
(b) A Medicaid eligible child under age twenty-one (21) who is:
   1. In an institution;
   2. At risk of institutionalization;
(c) A service covered as a rehabilitative service shall be one (1) of the following:
   (a) Individual services;
   (b) Group services;
   (c) Collateral services;
   (d) After school or summer program services;
   (e) Day treatment services;
   (f) Partial hospitalization services;
   (g) Intensive out-patient services;
   (h) Therapeutic foster care services;
   (i) Therapeutic group residential care services;
   (j) Residential crisis stabilization services; or
   (k) Wilderness camp.

Section 4. Provider Qualifications and Conditions for Participation: The following provider qualifications and conditions for participation shall be applicable for services provided pursuant to Section 3 of this administrative regulation:

(1) The Title V agency shall provide a service:
(a) Directly;
(b) Through agreement with the Kentucky Department for Community-Based Services as the state agency responsible for the provision of child and adult protective services; or
(c) Through agreement with the Kentucky Department for Mental Health and Mental Retardation Services as the agency responsible for oversight of mental health and substance abuse services in the state.
(2) A service which is provided directly by the Title V agency or by the Departments for Community-Based Services or Mental Health and Mental Retardation Services or a subcontractor shall meet the requirements established in the Impact Plus Manual for the service and shall include:
   (a) A plan of care;
   (b) Documentation of supervision of staff as appropriate; and
   (c) Documentation of services provided;
   (3) A provider or subcontractor shall maintain records to document services provided:
   (a) For not less than five (5) years; or
   (b) Until any audit dispute or issue is resolved if beyond five (5) years.

Section 5. Access to Records, Providers, and Recipients: (1) A provider or subcontractor shall provide to the department or a representative of an agency or office listed in subsection (4) of this section, upon request:
   (a) Information maintained by the provider to document the service provided;
   (b) Information regarding a payment claimed by the provider for furnishing a service; or
   (c) Information documenting the cost of the service;
   (2) Inspection shall be on site or through the submittal of written or electronic materials as determined to be appropriate by the department.
   (3) The department may interview:
   (a) Current or previous provider or subcontractor staff with regard to a service provided pursuant to Section 3 of this administrative regulation; or
   (b) A recipient of a targeted case management or rehabilitative service with regard to a service received pursuant to Section 3 of this administrative regulation.
   (4) Access to provider or subcontractor records relating to a service provided shall be required for:
   (a) A representative of the United States Department of Health and Human Services;
   (b) The United States Attorney General's Office;
   (c) The state Attorney General's Office;
   (d) The state Auditor's Office; or
   (e) The Office of the Inspector General.

Section 6. Reimbursement: Reimbursement shall be the documented cost for the direct provision of the service as specified in this section. The administrative and indirect overhead costs to the Departments for Public Health; Mental Health and Mental Retardation Services or Community Based Services shall not be reimbursed by the department.
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(1) A payment shall be based on actual expenditures incurred for the provision of the service by the Title VI agency or the Department for Mental Health and Mental Retardation Services or Community Based Services.

(2) For a service provided directly by the Title VI agency or by the Department for Community Based Services or Mental Health and Mental Retardation Services, the appropriate agency shall maintain service and cost records to document that payments do not exceed cost.

(3) For a service provided through a subcontractor, the applicable state agency shall maintain records showing a payment made to a subcontractor on an individual client per service basis.

(4) The payment rate for a subcontractor-provided service shall be negotiated between the provider and the subcontractor.

(5) A negotiated rate for a subcontracted service shall not be effective unless approved by the department.

(a) To facilitate the negotiated rate approval process, the department's representative may participate directly in the negotiation process and review proposed subcontractor payment amounts prior to approval.

(b) Depending on the service provided, a billable unit-of-service shall be in increments of:

(a) Fifteen (15) minutes;
(b) One (1) hour;
(c) One (1) day; or
(d) One (1) month.


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

DENNIS BOYD, Commissioner
JIMMY D. HELTON, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000 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 December 14, 2000, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jill Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Sharon Rodriguez

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides coverage and payment criteria for IMPACT Plus services.

(b) The necessity of this administrative regulation: Promulgation of this administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizens.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation allows for the provision of medically necessary health services to the extent and within the scope of coverage allowed by KRS 205.520.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denounces the limitations established by state statute, KRS 205.520, for the provision of medically necessary health services to Medicaid recipients.

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

(a) How the amendment will change the existing administrative regulation: This amendment establishes criteria for determining "at risk of institutionalization" and criteria for determining when a recipient is no longer eligible for IMPACT Plus services. It expands service planning requirements, identifies additional requirements for service coverage, expands service definitions and service provision requirements, prohibits provision of services by specified groups or individuals, increases medical records requirements, increases reporting requirements and requires establishment of quality improvement programs by providers and subcontractors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide uniform access to medically necessary services to the targeted population. It also provides the Department for Medicaid Services the necessary tools for monitoring services and to ensure delivery of quality services to the targeted population.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 205.520 because it provides for the administration of Title XIX of the Federal Social Security Act by the Department for Medicaid Services. The amendment provides governing rules for administering the IMPACT Plus program. The amended regulation conforms to KRS 205.520 by establishing necessary rules for administering the IMPACT Plus program, a program necessary to protect, develop, and maintain the health of the individual citizens of Kentucky and to qualify for federal funds and to cooperate with other state agencies for the proper administration of the cabinets programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the authorizing statutes by establishing criteria for determining "at risk of institutionalization" which provides for uniform access to medically necessary services for the targeted population. It also establishes the necessary policy to protect the health of the individual citizens of Kentucky (within the targeted population). Finally, this amendment provides for cooperation with other state agencies, DMHMRs and DCBS, utilizing their expertise and resources for the effective administration of cabinet programs.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment to 907 KAR 3:030 affects approximately 300 individuals currently receiving IMPACT Plus services, the Department for Mental Health and Mental Retardation Services (DMHMRs), the Department for Community Based Services (DCBS), and approximately 300 subcontractors who currently provide direct services through the IMPACT Plus program.

(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: The approximately 300 individuals currently receiving services through the IMPACT Plus program will be reassessed using the newly established criteria for determining "at risk for institutionalization." The reassessment will result in discontinuation of IMPACT Plus services for those individuals who no longer meet eligibility requirements and increased service planning requirements for those who continue to meet eligibility requirements. Subcontractors of IMPACT Plus services must meet expanded service provision and medical records requirements. They also must develop and implement quality improvement programs and develop systems for outcome measurement. DMHMRs and DCBS, Medicaid providers of IMPACT Plus services, have additional tracking and reporting requirements, must develop and implement a quality improvement program and must develop an outcome measurement system.

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

(a) Initially: No additional cost associated with the initial implementation of the amendment to this regulation.

(b) On a continuing basis: The management team of IMPACT
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Plus anticipates continued budget neutrality of the IMPACT Plus program. Impact Plus expenditures will be offset by decreases in current expenditures for in-state and out-of-state placements of children in psychiatric facilities, decreased use of other behavioral health services and against savings realized from a reduction of length of stay or intensity level of children in psychiatric facilities in Kentucky.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal and State matching funds. The amendment to this regulation will be budget neutral. Funding for this program was included in the enacted budget of the 2000 General Assembly.

(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: 907 KAR 3:030 does not necessitate any increase in fees or require additional funding for implementation.

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

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(Amendment)


RELATES TO: KRS Chapter 13B, 17.165, 199.892-199.896, [209-0924], (7), (8), (19), [209.996] 508.100, 508.110, 508.120, 510.040 to 510.140, 510.150, 529.020 to 529.050, 530.020, 530.054, 531.310 to 531.370, 600.020(1), EO 2000-1104 [209.010; 620.626]

STATUTORY AUTHORITY: KRS [194B.080(4); 199.896(2), (3), (4), (5); EO 98-754]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.896(2) grants authority to the Cabinet for Families and Children to promulgate administrative regulations to [and] establish standards for child day care. This administrative regulation establishes licensure requirements for child day care facilities.

Section 1. Application. (1) An applicant for [either] a [provisional-or regular] license shall submit to the Cabinet for Health Services a completed Application for a License to Operate a Day Care Center, Form OIG-204 [4AR-204].

(2) Approval of an applicant for initial licensure shall result in the issuance of a provisional license for a six (6) month probationary period.

(3) A provisional license or renewal of a regular license [An application shall be considered under the provisions of Section 5 of this administrative regulation.

(4) [If the application for licensure is: (a) A corporation, the application shall include a current certificate of existence or authorization from the Secretary of State; or (b) A partnership, the application shall include a written statement from each partner that the partnership is current and liable.

(5) [If the status of a corporation, or partnership, or ownership of the child care facility changes, the new entity shall submit an application for provisional licensure pursuant to Section 2(6) of this administrative regulation.

(6) [If ownership of a child care facility changes and the Cabinet for Health Services approves provisional licensure upon inspection of the facility under new ownership, the date on the provisional license shall be retroactive to the date of final sale.

Section 2. License issuance. (1) A provisional license [and regular licenses] shall be issued pursuant to KRS 199.896(3)(f-4); and (5).

(2) The Division of Licensed Child Care shall monitor a child care center that operates under a provisional license.

(3) Upon completion of the six (6) month probationary period required in Section 1(2) of this administrative regulation, the Division of Licensed Child Care shall: (a) Approve regular licensure for a child care facility operating under a provisional license.

(b) Extend the provisional license for a period of six (6) months upon completion of the probationary period; or (c) If a condition of Section 5 of this administrative regulation exists, deny regular licensure.

(4) Effect of previous denial or revocation.

(a) [The Cabinet for Health Services shall not accept] An application to operate a human services center shall not be accepted by the Cabinet for Health Services if the proposed human services center has, within the previous two (2) years, had its certification, license, registration, or permit to operate denied or revoked.

(b) An application shall be accepted by the Cabinet for Health Services and a provisional license shall be granted to operate a child care facility from an entity that has: 1. Within the previous five (5) years, had a certification, license, registration, or permit to operate a human services center denied or revoked for reasons set forth in Section 6(1)(b) or (2)(a) or (b) of this administrative regulation:

2. Within the previous five (5) years, voluntarily forfeited a certification, license, registration, or permit after the cabinet has initiated denial or revocation action; or

3. Within the previous two (2) years, had a certification, license, registration, or permit revoked for a reason set forth in Section 5(1)(a) of this administrative regulation.

(b) After the expiration of the two (2) [five (5)] year period, provided [an entity meeting the criteria of paragraph (a) or (2) of this subsection may apply for a provisional license after establishing] that the applicant has: 1. The ability to comply with the provisions of this administrative regulation; and

2. Completed sixty (60) hours of [cabinet-approved] training approved by the Cabinet for Health Services in developmentally appropriate child care practice prior to the time of the prior denial or revocation;

3. Not had an application certification, license, registration, or permit denied, revoked, or suspended for one (1) of the reasons set forth in Section 5(1)(b) or (2) of this administrative regulation.

(c) If a provisional license is granted after the two (2) [five (5)] year period specified in paragraph (a) of this subsection, the licensee shall serve a two (2) year probationary [provisional] period during which the child care facility shall be inspected on at least a quarterly basis. Upon completion of the two (2) year probationary [provisional] period, a regular license shall be issued if the licensee is in compliance with subsection (3) of this section.

(5) [A provisional or regular license shall specify: (a) A particular physical location; (b) A designated sponsor or owner as operator; (c) Age category of the children in care; (d) The maximum number of children allowed to be under facility supervision at one (1) time, including a child related to the licensee, based upon: 1. Available space as determined by the State Fire Marshall’s Office in conjunction with the Cabinet for Health Services; 2. Adequacy of program; 3. Equipment; and 4. Staff; [f] (e) If provided, nighttime care; [f]; (f) If provided, transportation; [f]; and (g) A list of services to be provided by the child care facility.]

(f) [4] (f) To qualify for a provisional and maintain a regular license, a child day care facility shall: (a) Provide written documentation from the zoning commission showing compliance with local zoning requirements; (b) Be approved by the Office of the State Fire Marshal or designee;
(c) Have an approved water and sewage system in accordance with local, county and state laws;
(d) Have adequate equipment, supplies, and staff to serve initial enrollment of children;
(e) Provide written proof of liability insurance coverage [in the amount of at least $100,000 per occurrence]; and
(f) Comply with provisions of this administrative regulation and 922 KAR 2:110 and 922 KAR 2:120.

(7) (5) Corrective plans.
(a) The Cabinet for Health Services shall perform an on-site child care facility inspection, pursuant to KRS 199.896(14) [(16)], in order to ascertain compliance with subsection (5) [(4)] of this section. A regulatory violation identified during an inspection shall be reported to the child care facility in a written statement of deficiency.
(b) A child care facility not in compliance shall submit, within ten (10) days of receipt of the statement of deficiency, a written plan for the elimination or correction of a violation. The plan shall detail:
1. Specific action undertaken to correct a violation;
2. The date action was completed [initiated]; and
3. Action utilized to assure ongoing compliance.
(c) The Cabinet for Health Services shall review the plan and notify the child care facility, in writing, of the decision to:
1. Accept the plan;
2. Not accept the plan; or
3. Deny, suspend, or revoke the child care facility's license, pursuant to Section 6 of this administrative regulation.
(d) A notice of unacceptability shall state the specific reasons the plan is unacceptable.
(e) A child care facility notified of unacceptability of its plan shall, within ten (10) days of notification:
1. Submit an amended plan; or
2. Have its license revoked or denied for failure to submit an acceptable amended plan.
(f) [(6)] A [regular or] provisional license shall be issued and a regular license shall be renewed if the facility has met the requirements contained in this administrative regulation and KRS 199.896(3), (13), (15), (16), (18), (19); (4): (9); (11); (12); (14), and (19) [(15)].

(8) [(7)] A [regular or] provisional or regular license shall not be sold or transferred.

(iii) Change of ownership:
(a) A prospective new owner shall submit:
1. An application, L&HR 204;
2. A fee as specified in Section 3 of this administrative regulation;
and
3. If the facility increases capacity, proof of approval by the Office of the Fire Marshal;
(b) The Office of Inspector General, Division of Licensing and Regulation, shall perform an on-site facility inspection, pursuant to KRS 199.896(10), in order to ascertain compliance with this administrative regulation, KRS 199.896(12), 922 KAR 2:110, and 922 KAR 2:120;
(c) The effective date of a license granted on an application for change of ownership shall be:
1. For a facility that meets requirements, the date the facility is acquired by the new owner;
2. For a facility that does not meet requirements, the date that compliance is achieved; or
3. For a facility that increases capacity, not before the approval date issued by the State Fire Marshal.

(10) [(9)] Changes to the facility.
(a) A licensee shall notify the Cabinet for Health Services, in writing, if there is a change to the child care facility as listed in 922 KAR 2:110, Section 4(4)(b) through (e)
(b) The notification shall be signed by each owner listed on the license application.
(c) A fee shall not be charged.
(d) Notification shall be submitted to the Division of Licensed Child Care [Licensing and Regulation], 275 East Main Street, [4E-A]; Frankfort, Kentucky 40621.

(11) [(10)] The license shall be posted in a conspicuous place in the child care facility.
(12) [[11]] (1A) A child care facility shall not begin operation without a license to operate from the Cabinet for Health Services.
(13) [(12)] A child care facility operating without a license shall be subject to legal action.

Section 3. Fees. (1) Licensing fees shall be charged pursuant to KRS 199.896(3) [(4)].
(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the license application.
(3) A fee shall not be refunded if an inspection has been made by the Cabinet for Health Services or the State Fire Marshall's Office.

Section 4. Inspections. Inspections of licensed day care facilities shall be made pursuant to KRS 199.896(6), (7), and (16), and 199.898(2)(d) and (e).

Section 5. Annual Renewal. A licensee seeking renewal shall submit, one (1) month prior to license expiration, an application for Renewal of a License to Operate a Day Care Center, Form L&HR - 204A; in compliance with the provisions of Section 1(6) and (4) of this administrative regulation.

Section 5. [(6)] Basis for Denial, Suspension or Revocation. (1) The Cabinet for Health Services shall deny an application or suspend or revoke a provisional or regular license if the applicant for license [or individual licensee], director, employee, or a person who has supervisory authority over a child [under the supervision of the licensee]:
(a) Fails to meet the requirements of this administrative regulation or those of 922 KAR 2:110 or 922 KAR 2:120; or [Chapter 2, except for a violation involving abuse, neglect, or exploitation of a child or adult, or a sexual offense;]
(b) Has been convicted:
1. Of a sexual offense designated in KRS 510.040 to 510.140, 510.150, 529.020 to 529.050, 530.020, 530.064, or 531.310 to 531.370;
2. Of a crime of abuse, neglect or exploitation of a child, pursuant to KRS 508.100, 508.110, or 508.120;
3. As a violent offender, pursuant to KRS 17.165(2);
(c) Has had a human services center or facility registration, certification, permit, or license denied or revoked for a reason set forth in this subsection;
(d) Has voluntarily forfeited a registration, certification, permit, or provisional or regular license after Cabinet for Health Services' initiation of a denial or revocation action against him, for a reason set forth in paragraph (a), (b) or (c) of this subsection;
(2) A licensed child care facility shall not hire an individual and an application for license shall be denied pursuant to KRS 199.896(19), if the individual or applicant:
(a) Has had an incident of abuse or neglect of a child substantiated by the cabinet and has been provided or is provided by the cabinet with an opportunity to appeal the substantiation to an administrative or judicial body, and
1. The individual waived the right to appeal the substantiation;
2. The substantiated incident was upheld by an administrative or judicial body; or
(b) Is listed on the Nurse's Aid Abuse Registry by the Inspector General's Office. [A director of a child day care center shall not:
(a) Have had an allegation of abuse or neglect of a child, pursuant to KRS 660.020(1), substantiated by the Cabinet for Families and Children pursuant to 922 KAR 1:330; and, if appealed, 922 KAR 1:320; or
(b) Be listed on the Nurse's Aid Abuse Registry by the Inspector General's Office.]

(3) Emergency action shall be taken pursuant to KRS 199.898(4)
[(5)]
(4) Public information shall be provided pursuant to KRS 199.898(10) and (11) [(6)] and (7) and KRS 199.898(2)(d) and (e).

Section 6. [(7)] Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension or revocation, the Cabinet for Health Services shall inform the applicant for license or licensee by written notification of the right to appeal the notice of adverse action pursuant to KRS Chapter 138.
(2) An adverse action may be appealed by filing a written request for a hearing. The request shall:
(a) Be submitted to the Secretary of the Cabinet for Health Serv-
ices within fifteen (15) days of receipt of the notice of adverse action; and

(b) Specify whether an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or licensee files a written request for a hearing, the Cabinet for Health Services shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) If the applicant for licensure or licensee files a request for a hearing and a request for an informal dispute resolution, the Cabinet for Health Services shall:

(a) Abate the formal hearing pending completion of the informal dispute resolution process; and

(b) Proceed to informal dispute resolution.

Section 7. Informal Dispute Resolution. (1) A request for informal dispute resolution shall:

(a) Accompany the request for a hearing;

(b) Identify the licensure deficiency in dispute;

(c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency;

(d) Include documentation that disputes the deficiency; and

(e) Specify whether the applicant for licensure or licensee requests a meeting with Cabinet for Health Services staff.

(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:

(a) Review documentation submitted by the applicant for licensure or licensee;

(b) If requested, schedule a first-level informal dispute resolution meeting with the applicant for licensure or licensee.

(3) Unless both parties agree in writing to an extension of time, the first-level informal dispute resolution meeting shall be held within ten (10) days of receipt of the request by the Cabinet for Health Services.

(4) The regional program manager or designee and a child care provider who did not participate in the survey resulting in the disputed deficiency shall conduct the first-level informal dispute resolution meeting.

(5) Within five (5) days completion of the first-level informal dispute resolution meeting, the regional program manager or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution; and

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(6) If a first-level informal review is requested in lieu of a dispute resolution meeting, the regional program manager or designee shall comply with the provisions of subsection (5)(a) through (c) of this section within ten (10) days of receipt of the request for first-level informal dispute resolution.

(7) A decision issued by the regional program manager may be appealed:

(a) Proceeding with a hearing pursuant to KRS 13B.050; or

(b) Filing a written request for a second-level informal dispute resolution to the Director of the Division of Licensed Child Care within ten (10) days of receipt of the regional program manager’s decision. The request shall specify whether the applicant for licensure or license requests a meeting with Cabinet for Health Services staff.

(8) Upon receipt of the written request for second-level informal dispute resolution, the Director of the Division of Licensed Child Care or designee shall:

(a) Review the decision issued from the first-level informal dispute resolution;

(b) Review the documentation described in subsection (1)(d) of this section; and

(c) If requested, schedule a second-level informal dispute resolution meeting with the applicant for licensure or license.

(9) Unless both parties agree in writing to an extension of time, the second-level informal dispute resolution meeting shall be held within ten (10) days of receipt of the request by the Cabinet for Health Services.

(10) Within five (5) days of completion of the second-level informal dispute resolution meeting, the Director of the Division of Licensed Child Care or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for second-level informal dispute resolution; and

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(11) If a second-level informal review is requested in lieu of a dispute resolution meeting, the Director of the Division of Licensed Child Care or designee shall comply with the provisions of subsection (10)(a) through (c) of this section within ten (10) days of receipt of the request for second-level informal dispute resolution.

(12) If an applicant for licensure or license is satisfied with the decision issued during informal dispute resolution, the request for a hearing shall be withdrawn.

(13) If an applicant for licensure or license is not satisfied with the decision issued from the second-level informal dispute resolution, the hearing previously held in abeyance shall be conducted in accordance with KRS Chapter 13B.

(14) A request for informal dispute resolution shall not:

(a) Limit, modify, or suspend enforcement action against the applicant for licensure or license; and

(b) Delay submission of a written plan of correction.

(15) Emergency action taken pursuant to Section 3(3) of this administrative regulation shall conform to the requirements of KRS 199.866(4). The informal dispute resolution process shall not restrict the Cabinet for Health Services’ ability to issue an emergency order to stop a complaint, or avoid an immediate threat to public health, safety or welfare under KRS 13B.125(2). If an application or license has been denied, suspended, or revoked, the Cabinet for Health Services shall notify the applicant or licensee, in writing, of the right to appeal pursuant to KRS Chapter 13B.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) OIG-204 [L&R-204], "Application for a License to Operate a Day Care Center, November 2000 [August, 1999]"; and

(b) OIG-204A [L&R-204A], "Application for Renewal of a License to Operate a Day Care Center, November 2000 [August, 1999]."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Inspector General’s Office, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. - 4:30 p.m.

DIPTA PARIS, Commissioner
VIOLA P. MILLER, Secretary
HIREN DESAI, Attorney
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, 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 December 14, 2000, 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 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. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kellei Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-5125
(Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensure requirements for child day care facilities. Also, this administrative regulation permits an applicant for licensure or licensee to appeal notice of an adverse action by requesting an informal dispute resolution as the first level of the appeals process prior to a KRS Chapter 13B hearing. Implementation of the informal dispute resolution process is required by HB 706, passed during the 2000 Session of the General Assembly, codified at KRS 199.896(6).

(b) The necessity of this administrative regulation: This administrative regulation establishes standards for child day care.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation complies with KRS 199.896 by establishing requirements for licensure; criteria for the denial of a license if a cabinet substantiated incident of child abuse or neglect or criminal records indicate convictions that may impact the safety and security of children in care; and procedures for implementation of the informal dispute resolution process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This amended administrative regulation complies with the legislative intent of HB 706 of the 2000 Session of the General Assembly.

(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 permit the Division of Licensed Child Care to approve initial licensure through issuance of a provisional license for a probationary period of 6 months. Upon completion of the 6 month probationary period, the child day care facility operating under a provisional license may be approved for regular licensure; the provisional license may be extended for an additional 6 month probationary period; or regular licensure may be denied for a reason specified in Section 5 of this administrative regulation. This administrative regulation is also being amended to clarify the intent of HB 706, codified at KRS 199.896(19). Finally, this administrative regulation is being amended to permit an applicant for licensure or licensee to appeal notice of an adverse action by requesting an informal dispute resolution as the first level of the appeals process prior to a KRS Chapter 13B hearing.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is being amended to clarify child care policy changes and comply with the legislative intent of HB 706 from the 2000 Session of the General Assembly.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation complies with KRS 199.896 by establishing requirements for licensure; criteria for the denial of a license if a cabinet substantiated incident of child abuse or neglect or criminal records indicate convictions that may impact the safety and security of children in care; and procedures for implementation of the informal dispute resolution process.

(d) How the amendment will assist in the effective administration of the statute: This administrative regulation specifies requirements for child day care licensure and appeal of notice of adverse action.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected include applicants for child care center licensure and licensees. The total number of anticipated applicants during a fiscal year is 295. The total number of licensed child care centers is 2,087.

(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: The amendment will permit the Cabinet for Health Services to approve initial licensure through issuance of a provisional license. The amendment will also allow an applicant for licensure or licensee to appeal notice of an adverse action by requesting an informal dispute resolution as the first level of the appeals process prior to a KRS Chapter 13B hearing.

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

(a) Initially: First year: $83,000 increased costs to the promulgating body. Issuance of a provisional license will double the number of surveys conducted by the Cabinet for Health Services for initial applications.

(b) On a continuing basis: $87,700 in continued costs to the promulgating body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 100 percent federal funds from the Child Care and Development 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: This administrative regulation does not require an increase in fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes only licensure requirements for child day care facilities.

(9) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development

(1) Pursuant to KRS 199.896, the cabinet is required to promulgate administrative regulations that establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, suspension, minimum staff-to-child ratios, and minimum safety requirements for operation of a certified family child care home. This administrative regulation establishes minimum requirements pursuant to KRS 199.896, 2.100, Certification of family child care homes.


NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 199.896, the cabinet is required to promulgate administrative regulations that establish standards for the issuance, monitoring, release of information, renewal, denial, revocation, suspension, minimum staff-to-child ratios, and minimum safety requirements for operation of a certified family child care home. This administrative regulation establishes minimum requirements necessary to operate programs and fulfill the responsibilities vested in the cabinet. In compliance with 1998 Ky. Acts ch. 524, sec. 4, and ch. 425, sec. 155, the Department for Community-Based Services has established standards for the certification of family child care homes. These standards are intended to protect the health, safety and welfare of children cared for by certified family child care home providers.

Section 1. Definitions. (1) "Abused or neglected child" is defined at KRS 600.020 [pursuant to 1969 Ky. Acts ch. 57, sec. 2(1)].

(2) "Assistant" means a person:

(a) Sixteen (16) years of age or older;

(b) Under direct supervision of a provider or substitute provider; and

(c) Meets the requirements listed in Section 2(3) [5(1)] of this administrative regulation.

(3) "Cabinet" means the Kentucky Cabinet for Families and Children:

(4) "Child" means a person under:

(a) Thirteen (13) years of age, or

(b) [under: Eighteen (18) years of age if the minor [person] has a [been identified as having] special need in which supervision is required [child care needs].

(4) [5] "Corporal physical punishment" [as governed by 1996 Ky. Acts ch. 524, sec. 2(14)] means the deliberate infliction of physical pain and does not include spontaneous physical contact that [which] is intended to protect a child from immediate danger pursuant to KRS 199.5505.

[6] "Commissioner" means the Commissioner for the Department for Community-Based Services.]
(5) "Employee" means a person who:
(a) Works for a certified family child care home provider; and
(b) Meets the requirements of Sections 2(9)(a), (9), (6)(a), and 10(1) of this administrative regulation.
(6) "Family child care home" is defined at KRS 199.684, as governed by KRS 199.6882 and does not apply to providers who care for their own children, related children or children in legal custody of the provider and up to three (3) unrelated children.
(7) "Home" means the private primary residence of the certified family child care home provider.
(8) "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:
(a) Day care centers;
(b) Certified family child care home;
(c) Adult day care center;
(d) Adult day health care facilities;
(e) Family care home;
(f) Group homes for the mentally retarded or developmentally disabled;
(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospitals;
(h) Intermediate care facilities;
(i) Nursing facilities;
(j) Nursing homes;
(k) Personal care homes;
(l) Skilled nursing facilities;
(m) Psychosocial rehabilitation treatment facilities;
(n) Child care facilities;
(o) Child placing agencies;
(p) Fetal primary care hospitals;
(q) Alzheimer nursing homes;
(r) Youth camps;
(s) Boarding home;
(t) Supports for community living.
(10) "Immediate danger" means a situation or condition in which one (1) or more children is being harmed or likely to be harmed before appropriate corrective action can be taken as evidenced by:
(a) A continuing condition;
(b) A recurring condition; or
(c) A condition which has caused death or serious physical injury within the past two (2) weeks.
(11) "Infant" means a child under one (1) year of age.
(12) "Nighttime care" means family home child care in which a child receives regular full- or part-time care during the night, and beginning at 6 p.m.
(13) "Provider" means an owner, operator or person who:
(a) Provides [providing] care for preschool children, or schoolage children, or both inside his own home for less than twenty-four (24) hours a day;
(b) [and who] Is not required to be licensed under KRS 209:00 and
(c) Meets [A provider shall meet] the requirements of Sections 2(5)(a) through (g) of this administrative regulation.
(14) "Provider’s own child" or "related child" means the provider’s:
(a) Own child;
(b) A child in legal custody;
(c) Grandchild;
(d) Niece;
(e) Nephew;
(f) Stepchild; or
(g) Sibling [own children; children in legal custody; grandchildren; nieces; nephews and stepchildren and siblings] in a separate residence.
(15) "Regular" means the provision of child care services in the caregiver’s home on more than one (1) day in one (1) week or more than five (5) hours per week.
(16) "School-age child" shall be considered as one (1) attending kindergarten or a grade above.
(17) "Special needs child" means a child [children] who has [have] multiple or severe problems and the Department for Community-Based Services [Service staff] has confirmed the need for ongoing specialized care.
(18) "Substitute provider" means a person who shall be used in the absence of a certified family child care home provider for a period not to exceed fourteen (14) calendar days in a year. A substitute provider who cares for children in excess of fourteen (14) calendar days in a one (1) year period shall meet the training requirement specified in Section 2(6)(a) of this administrative regulation. 
(19) "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. (1) The Department for Community Based Services shall be responsible for certifying a [the certification of] family child care home [homes].
(2) An applicant for certification shall:
(a) Be at least eighteen (18) years of age; and
(b) Submit within ninety (90) days of initiation of the application process:
1. A completed DCC-78, Application for Family Child Care Certification;
2. A completed DCC-79, Self-Check List;
3. A physician’s statement documenting that the applicant’s health is satisfactory for operation of a family child care home;
4. Two (2) character references;
5. A nonrefundable application fee;
6. To a criminal records check conducted within the past year by the Kentucky State Police or Administrative Office of the Courts;
7. To a check by the cabinet for a record of:
   a. Abuse or neglect of an adult or child; or
   b. A sexual offense; and
8. A copy of the results of a negative tuberculin skin test administered within thirty (30) days of the date of application for certification; or
9. Consistent with medical protocol a;
   a. Chest x-ray administered within thirty (30) days of the date of application for certification; or
   b. Physician’s statement documenting that the individual is free from tuberculosis.
(3) An adult living in the home of the applicant, an applicant’s assistant, employee, and substitute shall submit:
(a) To a criminal records check conducted within the past year by the Kentucky State Police or Administrative Office of the Courts;
(b) To a check by the cabinet for a record of:
   1. Abuse or neglect of an adult or child; or
   2. A sexual offense; and
   (c) Proof that the individual is free of tuberculosis according to a:
      1. Negative tuberculin skin test;
      2. Chest x-ray; or
      3. Physician’s statement.
(4) Upon receipt of a completed application for certification and a nonrefundable certification fee, cabinet staff shall:
(a) Review and process the application; and
(b) Conduct an announced inspection of the home pursuant to KRS 199.6892.
(5) If the requirements of subsections (2) through (4) of this section have been met, an applicant shall be certified for a two (2) year period.
(6) Within three (3) months of approval for initial certification, an applicant shall:
(a) Demonstrate completion of training pursuant to KRS 199.6892; and
(b) Obtain commercial liability insurance of at least $50,000 per occurrence.
(7) The family child care home certificate shall:
(a) Be displayed in a prominent place;
(b) Contain:
1. The name and address of the child care provider;
2. Maximum number of unrelated children who may be served;
3. Identification number;
4. Effective and expiration date; and
(c) Be valid only for:
   1. Name of the individual authorized on the certificate to operate a
family child care home; and

2. Residential address printed on the certificate.

(b) Family child care certification shall be renewed every two (2) years. The family child care home provider shall submit at least one (1) month prior to the expiration of certification:

(a) A certification renewal request, DCC-78;

(b) A nonrefundable renewal fee;

(c) A physician’s statement documenting the family child care home provider’s health is satisfactory for continued operation of a family child care home; and

(d) Proof that the family child care home provider continues to meet the minimum requirements specified in this section and Sections 10.11.12.13, and 14 of this administrative regulation.

(9) A change of location shall require:

(a) A change of location application; and

(b) An inspection of the new home. [Authorized representatives of the department shall be trained to apply the administrative regulation and have the authority to:

(a) Inspect premises;

(b) Review records required by this administrative regulation; and

(c) Review the program of family child care homes.

(5) Inspections by the department shall be unannounced.

(6) A person who has had a certification, license, registration or permit to operate a human services center denied for reasons set forth in Section 3(f)(a) or (b) of this administrative regulation or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial for reasons set forth in Section 3(f)(a) or (b) of this administrative regulation or revocation action shall not apply for a certificate to operate a family child care home for a period of five (5) years from the date of revocation.

(7) After the expiration of the five (5) year period, the person may apply for certification after establishing that he fully complies with the provisions of this administrative regulation and has demonstrated a completion of at least sixty (60) hours of training in developmentally appropriate child care practice since the time of the prior revocation.

(8) If certification is granted after the five (5) year period, the provider shall serve a two (2)-year probationary period during which the family child care home shall be inspected on a quarterly basis.

(9) Inspections shall be unannounced as governed by 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158.

(9) A provider making application for certification shall:

(a) Complete the DSS-76, Application for Family Child Care Certification, as incorporated by reference;

(b) Complete the DSS-79, Self-Check List, as incorporated by reference;

(c) Meet the minimum requirements as governed by 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158;

(d) Submit a criminal records check conducted within the past year by the Kentucky State Police for:

1. Adult persons living in the home; and

2. Employees of the provider;

(e) Submit proof that the following persons shall be free of tuberculosis, as stated by a qualified physician or health-care specialist:

1. Provider;

2. Employees; and

3. All adult persons living in the home; and

(f) The following persons shall submit to checks by the cabinet or court for a record of abuse or neglect of an adult or child, or found to have committed any sexual offense:

1. Provider;

2. Employees; and

3. All adult persons living in the home;

(g) Comply with provisions set forth in Sections 5 through 11 of this administrative regulation;

(h) Upon receipt of the application and fee, staff of the department shall:

(a) Review the application; and

(b) Conduct an inspection of the home as governed by 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158.

(7) If the requirements have been met excluding the provisions of Section 5(c)(e) and (f) of this administrative regulation which shall be met within three (3) months of the application date, the home shall be certified and a certificate shall be issued for a two (2)-year period.

(a) The certificate shall be displayed where parents can read it and shall contain:

1. The name and address of the provider;

2. Limit of children to be served;

3. Identification number; and

4. Effective and expiration dates.

(b) The certificate shall be valid for the certified provider; and the address listed: A change of location shall require a change of location application and inspection as specified in subsections (5) and (7) of this section.

(8) If the provider does not comply with the standards set forth in this administrative regulation within three (3) months of the initial inspection, the application shall be denied.

(9) Certification shall be renewed every two (2) years. The provider shall submit a certification renewal request, a DSS-79, a health status form; proof that he continues to meet the requirements of Section 3(f)(d), (e), and (f) of this administrative regulation; and proof that employees and all adults in the home continue to meet the requirements of subsection (5)(f) of this section; and fee one (1) month prior to the expiration of the certificate.

(10) A certified family child care home shall not have a certification suspended or revoked for failure to comply with standards of this administrative regulation until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met; except for conditions as governed by Section 3(9)(d) of this administrative regulation.]

Section 3. Denial of Application for Certification. [Suspension, or Revocation.] (1) An application for certification as a family child care home provider shall be denied if the applicant, assistant, employee, substitute, or an adult residing in the household who has direct contact with a minor:

(a) Has had an incident of abuse or neglect of a child substantiated by the cabinet pursuant to KRS 17.165 and has been provided or is provided with an opportunity to appeal the substantiation to an administrative or judicial body; and

1. The individual waived the right to appeal the substantiation; or

2. The substantiated incident was upheld by an administrative or judicial body;

(b) Has had an incident of abuse or neglect of an adult substantiated by the cabinet;

(c) Has been convicted of a crime pursuant to KRS 17.165;

(d) Has been convicted of a crime that may impact the safety and security of a child in care pursuant to KRS 199.889(2); or

(e) Has been convicted of a felony for a drug-related offense; or

(f) Fails to provide a criminal records check.

(2) An application for certification as a family child care home shall be denied if the applicant fails to comply with the minimum certification standards specified in Sections 2, 10, 11, 12, 13, and 14 of this administrative regulation and KRS 199.889.

(3) An application for certification shall not be approved for a period of five (5) years from the date of denial, revocation, or voluntary forfeiture of certification, licensure, or a permit to operate a human services center for a reason specified in subsections (1) and (2) of this section.

(4) Upon expiration of the five (5) year period, an applicant for certification:

(a) May be approved for a two (2)-year probationary period; and

(b) Shall receive unannounced inspections on at least a quarterly basis if the applicant:

1. Demonstrates compliance with the provisions of this administrative regulation; and

2. Has completed at least sixty (60) hours of training approved by the cabinet in developmentally appropriate child care practice since the time of denial, revocation, or voluntary forfeiture of certification, licensure, or a permit to operate a human services center for a reason specified in subsections (1) and (2) of this section.

Section 4. Intermediate Sanctions. If the cabinet determines that a certified family child care home provider is in violation of this administrative regulation, the cabinet may:

(a) Require the provider to participate in additional training;

(b) Increase the frequency of monitoring by cabinet staff;
Section 5. Nonemergency Suspension. (1) If the cabinet determines that a certified family child care home provider is in violation of this administrative regulation or fails to correct a deficiency by the date specified on the corrective action plan, a nonemergency suspension for a period not to exceed sixty (60) calendar days may occur.

(2) At least thirty (30) calendar days prior to the start date of a nonemergency suspension, a certified family child care home provider shall receive personal service or through certified mail, return receipt requested, a written notice that:

(a) Specifies the:
   1. Effective date;
   2. Duration of the suspension; and
   3. Corrective action necessary for reinstatement of the certification;

(b) Explains the reason for the suspension;

(c) Advises the family child care home provider of the right to request an appeal prior to the effective date of the nonemergency suspension;

(d) Specifies that the nonemergency suspension shall be stayed if an appeal is requested;

(e) Specifies that if the provider does not request an appeal of the nonemergency suspension or if the nonemergency suspension is upheld following the hearing, the provider shall cease operation of the family child care home during the period recommended for suspension;

(f) Specifies that suspension may lead to revocation; and

(g) Requires the family child care home provider to surrender the certificate to the cabinet when the suspension becomes effective.

(3) If a certified family child care home provider’s certification has been suspended for a nonemergency reason, the cabinet or designated staff shall make reasonable efforts to:

(a) Notify a parent of a child in care; and

(b) Assist the parent in securing alternate child care arrangements.

(4) By the end of the nonemergency suspension period, certification shall be:

(a) Reinstated; or

(b) Revoked for failure to take corrective action necessary for reinstatement of the certification.

Section 6. Emergency Suspension. (1) If the cabinet determines that an immediate threat to the health, safety, or welfare of a child exists, the cabinet shall serve through certified mail, return receipt requested, or by personal service, written notice of an emergency suspension. The notice shall:

(a) Specify the date the emergency suspension shall begin;

(b) Explain the reason for the action;

(c) Specify the corrective action necessary for reinstatement of the certification; and

(d) Advise the family child care home provider of the right to request an appeal within ten (10) working days from the effective date of the emergency suspension.

(2) Upon receipt of an emergency suspension notice:

(a) A certified family child care home provider shall cease providing child care services;

(b) A certified family child care home provider shall surrender the certificate to the cabinet when the suspension becomes effective; and

(c) Cabinet or designated staff shall make reasonable efforts to:
   1. Notify each parent of a child in the care of the suspended family child care home provider; and
   2. Assist the parent in securing alternate child care arrangements.

(3) If a certified family child care home provider does not request a hearing and the condition that resulted in an emergency suspension has not been corrected, the certification shall be revoked.

Section 7. Revocation. (1) A family child care home provider’s certification shall be revoked if:

(a) The provider knowingly misrepresents or offers false information on the application or other form required by the cabinet;

(b) The provider interferes with a cabinet representative’s ability to perform official duties;

(c) The provider refuses during the hours of operation, access by a parent or cabinet representative to:
   1. A child; or
   2. Space in the home used for child care;

(d) The provider is convicted of a criminal charge that threatens the health, safety, or welfare of a child in care;

(e) The provider is no longer able to operate a family child care home due to a medical condition; or

(f) A condition specified in Section 3(1) of this administrative regulation exists.

(2) If the cabinet determines that a condition of subsection (1) of this section exists, a written notice of revocation shall be delivered by personal service or through certified mail, return receipt requested, at least thirty (30) days prior to the effective date of the revocation. The notice shall:

(a) Explain the reason for the revocation;

(b) Specify that the child care provider shall cease operation as a certified family child care home upon revocation;

(c) Advise the family child care home provider of the right to request an appeal prior to the effective date of the revocation;

(d) Specify that revocation shall be stayed if an appeal is requested; and

(e) Require the family child care home provider to surrender the certificate to cabinet staff where the revocation becomes effective.

(3) If, after a family child care home provider’s certification has been revoked, the cabinet or designated staff shall make reasonable efforts to:

(a) Notify a parent of a child in care; and

(b) Assist the parent in securing alternate child care arrangements. [The cabinet shall review and may deny, suspend or revoke certification if the:

(a) Provider, an adult living in the provider’s home or person under the supervision of the provider:
   1. Has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult; or
   2. Refuses to provide a criminal records check;

(b) Provider or an adult living in the provider’s home has abused, neglected or exploited a child or an adult;

(c) Provider fails to comply with certification standards set forth in this administrative regulation; or

(d) Provider has had a human services center or facility registration, certification, permit or license denied for reasons set forth in paragraph (a) or (b) of this subsection or revoked or voluntarily forfeits their certification; license, registration or permit after the department initiates denial for reasons set forth in paragraph (a) or (b) of this subsection or revocation action.

(2) If one (1) of the grounds for denial, suspension or revocation set forth in this section exists and the condition creates an immediate danger to the children in care, the department may suspend or revoke the certification immediately.]
(2) If a hearing officer's final order does not uphold an emergency suspension, the provider may resume providing child care.

(3) If an emergency suspension leads to revocation of certification, no further appeal shall be permitted at the cabinet level. If denial or revocation of certification is upheld, the commissioner's or designee's notification shall specify the date by which the family child care home shall close.

(3) A family child care home continuing to have four (4) to six (6) unrelated children in attendance after the closing date established by the commissioner shall be subject to legal action by the cabinet as provided by law.

Section 10, (5) Standards for the Provider. (1) Upon approval of certification as a family child care home, the provider shall meet the following qualifications:

(a) Be at least eighteen (18) years of age;
(b) Submit to a criminal records check conducted within the past year by the Kentucky State Police;
(c) Be free of tuberculosis, as stated by a qualified physician or health care specialist;
(d) Not be found by the cabinet or court to have abused or neglected an adult or child;
(e) Not be found by the cabinet or court to have committed any sexual offense;
(f) Meet minimum requirements pursuant to KRS 199.8982 and this administrative regulation; and
(g) 1994 Ky Acts ch 524 sec 4 and ch 426 sec 156 and

(gg) Beginning with the second year of operation, participate annually in at least six (6) hours of approved child development training that complies with child development approved by the Department for Community-Based Services (to include the Guidelines for Obtaining ChildCare Training Revised July 1993 incorporated by reference in 922 KAR 2:001).

(2) [Staff-child ratio]

(ee) A certified family child care home provider shall not provide care for more unrelated children than the number authorized on the family child care home certificate [of children for which the family child care home is certified].

(3) If the certified family child care home provider cares for (hh) if more than four (4) infants, including the certified provider's own or related infants, [are in care] the certified provider shall have an assistant present.

(4) [ee] A certified family child care home provider shall not care for more than six (6) children under the age of six (6) years old, including the certified provider's own or related children.

(5) [ee] The maximum number of unrelated children in the care of a certified family child care home provider [of children for which the family child care home is certified] shall not exceed six (6). A provider may care for four (4) related children in addition to six (6) unrelated children for a maximum child care capacity of ten (10).

(6) [ee] Within three (3) months of the date of initial application for certification the provider shall:

(a) Demonstrate completion of training as governed by 1994 Ky Acts ch 524 sec 156 and
(b) Obtain liability insurance in the amount of $50,000 per occurrence.

(4) The certified family child care home provider shall be currently certified in:

(a) Infant and child cardiopulmonary resuscitation (CPR) by an agency approved by the Cabinet for Health Services or Board of Emergency Services; and

1. The American Red Cross;
2. The American Safety Council;
3. The American Heart Association; or
4. The American Safety and Health Institute;

(b) Infant and child first aid by an agency approved by the Cabinet for Health Services or Board of Emergency Services;

1. The American Red Cross;
2. The American Safety Council; or
3. The American Safety and Health Institute;

(7) If a certified family child care home provider operates the in-home child care business for twenty-four (24) consecutive hours, the provider shall:

(a) Receive an eight (8) hour period of respite after working sixteen (16) consecutive hours;
(b) [shall] Wash superficial wounds with soap and water before bandaging.

Section 11, (6) The Family Child Care Home Environment. (1) [The provider's home and play areas used for child care shall;]

(a) Be safe;
(b) Have adequate;
1. Heat;
2. Light; and
3. Ventilation.

(2) Each floor level used for child care, including the basement if applicable, shall have at least one (1);

(a) Unblocked exit;
(b) [and at least one (+)] Smoke detector; and
(c) Fire extinguisher.

(3) The home shall be free of hazards and the following items shall be [kept] inaccessible to a child in care [children]:

(a) [Medications and drugs];
(b) Cleaning supplies, poisons and insecticides;
(c) [Guns]; Knives, scissors and sharp objects;
(d) [Power tools, lawn mowers, hand tools, nails and other equipment];
(e) Matches, cigarettes, lighter and flammable liquids;
(f) Alcoholic beverages;
(g) Plastic bags; and
(h) Litter and rubbish.

(4) The following shall be stored in a locked area or container:

(a) Medication, including medicine that requires refrigeration; and
(b) Guns.

(5) Electrical outlets not in use shall be covered.

(6) An electric fan, floor furnace, or freestanding heater or fireplace;

(5) Electric fans, floor furnaces, or freestanding heaters or fireplaces, shall;

(a) Be out of the reach of a child [children] or
(b) Have a safety guard [on them] to protect a child [children] from injury.

(7) [ee] The home shall have:

(a) At least one (1) working telephone with a residential line; and
(b) A list of emergency numbers posted by each telephone, including numbers for:

1. [ee] Police;
2. [ee] Fire station;
3. [ee] Emergency medical care, rescue squad; and

(8) [ee] Equipment and toys shall be:

(a) Developmentally appropriate according to [ee] the age of children in care;
(b) In sufficient quantity for the [ages-end] number of children in care; and
(c) Kept in good repair.

(9) [ee] Stairs and steps used for children in care shall be;

(a) Solid;
(b) Safe; and
(c) Railed.

(10) If an infant or toddler is in the care of a certified family child care home provider, indoor stairs with more than two (2) steps shall be blocked if children in care are infants or toddlers.

(11) [ee] The provider shall;

(a) Maintain first aid supplies that are easily accessible for use in an emergency; and
(b) [shall] Wash superficial wounds with soap and water before bandaging.

(12) First aid supplies shall include a fully equipped first aid kit containing the following nonexpired items:

(a) Liquid soap;
(b) Adhesive bandages;
(c) Sterile gauze;
(d) Medical tape; and
(e) Scissors;
(f) A thermometer;
(g) Tweezers;
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(g) Thermometers;
(hj) Flashlight;
(h) Cold pack;
(ij) First-aid book; and
(k) Disposable [latex] gloves.

(13) Indoor areas, including furnishings, used for child care shall contain a minimum of thirty-five (35) square feet per child for:
(a) Play; and
(b) [for] Activities that [which] meet the developmental [developmental] needs of the children in care.

(14) An [14] outdoor play area [areas] shall be;
(a) Free of hazards; and
(b) Unless a child is under direct supervision, [shall be] fenced [or the provider shall make provisions to assure that the children are under direct supervision in outdoor play areas.]

(15) Outdoor stationary play equipment shall be securely anchored.

(16) A trampoline shall be inaccessible to a child in the care of a certified family child care home provider;
(17) A [13] swimming pool [or wading pools] on the premises shall:
(a) Be maintained; [and]
(b) Have a water filtering system;
(c) Be supervised when in use; and
(d) Be inaccessible when not in use [in order to safeguard the lives and health of the children].

(18) A [14] practice fire and tornado drill [drills] shall be conducted hours of operation;
(a) [with the children] At least monthly; and
(b) Documented.

(19) During hours of operation, the certified family child care home provider, employee, [15] Health and sanitation for the child care environment shall require that the provider:
(a) keep others in the home shall;
(b) Except for use of a drug prescribed by a physician; [a]
(c) be free of the influence of alcohol or drugs while the children are in care, except those prescribed by a physician; and
(d) [2] Prohibit smoking in the presence of children in care. [20]

(20) During a certified family child care home provider’s:
(b) In his absence, [assume that] a substitute provider or employee shall be physically present at the [family child-care] home during hours of operation.

(21) A certified family child care home provider shall:

(a) Not be employed outside of the home during regular hours of operation;
(b) The home shall;
(c) Be [ ];
(d) Have a home that is kept clean;
(e) Be uncluttered;
(f) Be [and] free of insects and rodents;
(g) [15] Have a water supply that is:
1. Properly located;
2. Protected;
3. Adequate;
4. [and] Of a source approved by the local health department; and
5. [fly] Have bathrooms, including toilets, sinks, and potty chairs that are:
1. Sanitary; and
2. In good working condition.

(23) The certified family child care home provider, assistant, substitute, and employee shall;
(a) [ ];
(g) Wash hands with soap and running water [or use nonwater hand sanitizer] before and after diapering a child;
(b) Ensure that a covered, leak-proof container is;
1. Available for soiled diapers;
2. Emptied daily; and
3. Cleaned daily;

(c) [fly] Use sanitary procedures when preparing and serving food;
(d) [fly] Assume that a child [children] shall not share:
1. Cups;
2. Eating utensils;
3. Wash clothes; [or]
4. Towels; and
(e) [fly] Assure that a covered, leak-proof container which is emptied and cleaned daily is available for soiled diapers;

(f) Refrigerate perishable food and beverages.

(24) The refrigerator shall be;
(a) In working order; and
(b) Maintained at [maintain] a temperature of forty-five (45) degrees Fahrenheit or below,
(25) Except if thawed for preparation or use, [and] frozen food shall be kept at a temperature [temperatures] to remain frozen; except if being thawed for preparation or use, [as verified by a thermometer in both the refrigerator and freezer].

(26) Unless provided as part of the fee for child care, [ ];
(i) Require that an infant’s formula shall be prepared and provided by the parent,
(27) If more than one [1] bottle-fed child is in the care of the provider, each child’s bottle shall be labeled,
(28) While feeding an infant, the;
(a) Child shall be held;
(b) Bottle shall not be;
1. Propped; or
2. Left in the mouth of a sleeping infant.

(29) Only [unless formula is provided as a fringe benefit to the parent];
(m) Label bottles for each individual child, except if there is only one bottle-fed child in care;

(n) Hold infants in care during feeding and never prop bottles;
(o) Serve only pasteurized milk or milk products shall be served.

(30) Meals shall:
(a) Be served in an amount appropriate to the age of the child; and
(b) Include appropriate types of food according to the age of the child;

(31) Breakfast shall include;
(a) Milk;
(b) Bread; and
(c) Fruit; or
(d) Vegetable; or
(e) 100 percent juice.

(32) A snack shall include [2] of the following:
(a) Milk;
(b) Protein;
(c) Fruit or vegetable or 100 percent juice; or
(d) Bread.

(33) Lunch and dinner shall include;
(a) Milk;
(b) Protein;
(c) Two (2) vegetables or a fruit and one (1) vegetable; and
(d) Bread.

(34) [p] Serve meals which include:
1. A food from each of the four (4) basic food groups; and
2. Snacks appropriate in amount and type of foods served for the ages of the children in care;

(q) Screen Windows and doors shall be screened [used] for ventilation.

(35) A [ ];
(t) [Veterinarian household pet shall be [pets] vaccinated for rabies,]

(36) [ ];
(e) [Store] Indoor and outdoor garbage shall be stored in a waterproof container with a tight-fitting cover.
(37) [containers with tight-fitting covers];
(f) Provide Adequate space shall be provided at [for] a rest-time for each child in care for more than four (4) hours. Individual linens shall be:
(a) [fly] Provided for each child;
(b) [fly] [and]
2. Changed;
1. At least weekly; or
2. If [they become] soiled or wet, immediately.
(38) [ ];
(u) If overnight care is provided, the caregiver shall:
(a) [H:] Remain awake until every child in care is asleep;  
(b) [E:] Sleep on the same level as an infant or toddler [infants and toddlers]; and 
(c) [B:] Provide comfortable, clean and safe bedding for each child.  
(39) A routine plan [116:] Program for children. A plan for daily 
activities and routines (including opportunities for outdoor play and 
exercise) shall be established for daily, 
(a) Activity; and 
(b) Opportunity for outdoor play.  
(41) A child who is not asleep shall be visually supervised.  
(41) Except for a school-aged child whose parent has given written 
permission and whose whereabouts are known, a child shall not be: 
(17) Visually supervise children who are awake and be able to 
respond to the children immediately; and 
(18) Children are not permitted off the premises without the 
caregiver [except for school-aged children, as long as: 
(a) Their whereabouts are known; and 
(b) The parents have given written permission].  
(42) [119:] Use of corporal physical discipline[.] pursuant to KRS 199.896 [1998 Ky. Acts ch. 524, sec. 2(14).] is prohibited.  
(43) A child [120:] Children shall be released from the family child 
care home to: 
(a) The child's custodial parent; 
(b) The person designated in writing by the parent to receive the 
child; and 
(c) A person in an emergency designated over the telephone by 
the parent.  
(44) [Section 7:] To assure a healthy environment, the certified 
family child care home provider shall maintain: 
(a) [11:] Maintain Current immunization certificate [immunizations 
certificates] for each child within thirty (30) days of enrollment; 
(b) [21:] Maintain for each child a Health and emergency informa-
tion form; 
1. Completed and signed by the child's parent or guardian;  
2. Retained [The completed form shall be] on file on the first day 
the child attends and [shall] include [the following information]:  
a. [56:] The child's name, address, and date of birth; 
b. [58:] The names of individuals to whom the child may be re-
leased; 
c. [60:] The general status of the child's health; 
d. [62:] Allergies or restrictions on the child's participation in activi-
ties with specific instructions from the child's parent or physician; 
e. [64:] The name and telephone number of the child's physician and 
preferred hospital; and  
g. [66:] Authorization by the parent or guardian for the provider to 
seek emergency medical care in the parent's absence.  
(45) A family child care home provider shall provide immediate 
notification of a medical emergency to the: 
(a) Parent; 
(b) Person exercising custodial control or 
(c) If the parent or person exercising custodial control is unavail-
able, family physician.  
(46) [93:] Provide A quiet, separate area that [which] can be easily supervised shall be provided for a child [for children] too sick to remain 
with other children.  
(47) Except as authorized by a licensed physician and only with 
the written daily request of the parent or guardian, [:] 
(48) [Prohibit] prescription medication shall not [or over-the-counter 
medications] be administered to a child, 
(48) [except as authorized by a licensed physician and with written 
daily request of the parent or guardian;  
(51) Administer] Nonprescription medication shall be administered 
to a child only with written daily request of parent or guardian, 
(49) The caregiver shall: 
(a) [.]  
(b) [Be able to recognize symptoms of childhood illnesses; 
(b) [Prohibit] Be able to provide basic first aid; and  
(c) [61:] Maintain a child care program that [which] assures af-
firmative steps are taken to protect children from abuse or neglect 
2(1)].  

Section 12, [9:] Transportation. [1] To assure the safety of chil-
dren. If transportation is provided or arranged by the certified family 
child care home provider, the provider shall: 
(a) [H:] Have written permission from a parent or guardian to 
transport his child; 
(b) [23:] Have a car or van equipped with seat belts [which allow 
each child to be individually secured]; 
(c) [93:] Require that a [each] child;  
1. [shall have a seat:] Be individually seat-belted; 
2. [and] Remain seated while the vehicle is in motion; and 
3. [if:] A child is under forty (40) inches in height; 
[a. [shall] Be transported in the back seat; and 
]b. [Restrain] in a federally-approved motor vehicle safety seat in 
good repair; 
(d) [44:] Have a valid driver's license issued by the Division of 
Motor Vehicles; 
(e) [55:] Have emergency and identification information about each 
child in the vehicle whenever children are being transported; and 
(f) [16:] Conform to state laws pertaining to vehicles, drivers li-
cense and insurance pursuant to [as governed by] KRS 186.500, 
186.020, and 186.530 [1998 Ky. Acts ch. 153, sec. 1; ch. 565, sec. 1, 
and Chapters 169 and 169A].  
(2) A child shall not be left unattended [7:] Never leave children in 
a vehicle [unattended by an adult].  
(3) [96:] Never-use] The back of a pickup truck shall not be used 
(44) to transport a child [children].  

Section 13, [9:] Records. (1) A certified family child care home 
provider shall maintain the confidentiality of a child's records.  
(2) The provider and the cabinet shall provide, upon request, public information pursuant to KRS 199.896.  
(3) The provider shall: 
(a) [56:] Report an incident of suspected child abuse or neglect pursu-
ant to KRS 820.030(1); and 
(b) Provide the cabinet access and information in the completion of 
524, sec. 2.]  

Section 14, Certified Family Child Care Home Program. The certified 
family child care home provider [10:] The program shall [ensure 
going communication with a child's parent by:  
(1) Develop [Developing] written information that about the service 
which specifies the;  
[a] Rate [charge] for child care; and 
[b] [the] Expected frequency of payment for the program;  
(2) Make available a copy of the certification standards to each 
parent; 
(3) Provide [Give] each parent with the name, and address, and 
television number of the cabinet for the purpose of registering a complaint [to register complaints] if the parent [he] believes the family 
child care home provider is not meeting the standards;  
(4) Post and provide to each parent a copy [copies] of children 
and parent rights pursuant to KRS 199.899; [1998 Ky. Acts ch. 524, 
sec. 3.]; and  
(5) Allow a parent [parents] to visit and observe the program dur-
ing the hours of operation; and 
(Communicate with each child's parent about the [his] child's;  
a] Development;  
(b) Activities;  
(c) Likes; and  
[d] Dislikes.  

Section 15, [11:] Incorporated by Reference. (1) DCC [DSS]-75, 
"Application for Family Child Care Certification", edition November 
2000 ["September, 1998"], Cabinet for Families and Children, is incor-
porated by reference.  
(2) DCC [DSS]-75, "Self Check List", edition November 2000 
["September, 1998"], Cabinet for Families and Children is incorporated 
by reference.  
(3) This material may be inspected, copied, or obtained, subject to 
applicable copyright law, at the Department for Community-Based
DIETRA PARIS, Commissioner
VIOLA P. MILLER, Secretary
HIREN DESAI, Attorney
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, 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 December 14, 2000, 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. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for certification as a family child care home provider.
(b) The necessity of this administrative regulation: This administrative regulation establishes minimum standards for operation of a certified family child care home.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 199.8962 by establishing minimum standards for the issuance, monitoring, release of information, renewal, denial, revocation, suspension, minimum staff-to-child ratios, and minimum safety requirements for operation of a certified family child care home.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This revised administrative regulation complies with the legislative intent of HB 706 of the 2000 Session of the General Assembly, codified at KRS 199.8982 and 17.165.
(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 clarify the legislative intent of HB 706 of the 2000 Session of the General Assembly, codified at KRS 17.165(5); outline the process for intermediate sanctions, nonemergency suspension, emergency suspension, and revocation; outline the process for appeal of denials, intermediate sanctions, nonemergency suspension, emergency suspension, and revocation; require that a certified family child care home provider who operates an in-home child care business for 24 consecutive hours receive an 8 hour period of respite after working 16 consecutive hours and employ an assistant or employee during the respite period; ensure that guns and medication, including refrigerated medication, be stored in a locked area or container; prohibit the use of wading pools because of sanitation concerns; and require immediate notification of a medical emergency to a parent, person exercising custodial control, or if the parent or custodian is unavailable, family physician.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation is being amended to clarify child care policy changes and comply with the legislative intent of HB 706 from the 2000 General Session of the General Assembly.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 199.8982 by establishing minimum standards for the operation of a certified family child care home.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation specifies the requirements for certification of family child care home providers.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected include certified family child care home providers. Total: 872.
(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: The amendment will clarify the legislative intent of HB 706 of the 2000 Session of the General Assembly, codified at KRS 17.165(5), and implement "progressive discipline" by outlining the process for intermediate sanctions, nonemergency suspension, emergency suspension, and revocation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Any additional cost impact of this administrative regulation will be absorbed by the current biennial budget.
(b) On a continuing basis: Any additional cost impact of this administrative regulation will be absorbed by the current biennial budget.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 100 percent federal funds from the Child Care and Development 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: This administrative regulation does not require an increase in fees.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation continues to require a nonrefundable application fee of $10 and renewal fee of the same amount pursuant to KRS 199.8982.
(9) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(Amendment)

922 KAR 2:110. Child care facility provider requirements.

RELATES TO: KRS 17.165, 61.872 to 61.884, 199.894 to 199.896, 214.010, 214.036, EO 2000-1104
STATUTORY AUTHORITY: KRS [194:650] 199.896(2)
NECESSITY, FUNCTION AND CONFORMITY: KRS 199.896(2)
grants authority to the Cabinet for Families and Children to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish provider requirements for child day care facilities.

Section 1. General. (1) The licensee shall be responsible for the operation of the child care facility pursuant to 922 in accordance with 965 KAR 2:090, 922 KAR 2:110, and 922 KAR 2:120[; and 965 KAR 2:138].
(2) Child care facility staff shall be:
(a) Instructed in the requirements for operation; and
(b) Provided with a copy of the minimum standards [shall be available] for their use.
(3) Information concerning a child, his parent, relative, or person exercising custodial control [children, their parents, relatives, or guardians] shall be kept in strict confidence by child care center [the] staff, except as otherwise required by law.
(4) A volunteer or person under the supervision of the licensee [Volunteers] shall comply with the policies and procedures of the child care facility.
(5) Program policies and procedures shall;
(a) Be in writing; and
(b) [shall] Include;
1. Personnel policies;
2. Job descriptions;

3. An organization chart;
4. [charts]; Chain of command; and
5. Other procedures pertaining to the operation of the child care facility.

(6) An activity of a person living in a child care facility that is a [Activities of persons living in a facility that is the] dwelling unit shall not interfere with the day care program.

(7) Good personal hygiene shall be practiced by staff of a child care [persons in the] facility.

(8) A caregiver’s hands shall be washed (a)–Caregivers shall wash hands with soap and [warm] running water;
   (a) After diapering or toileting a child; and (each child)
   (b) [Caregivers shall wash hands with soap and running water] Immediately before feeding a child.

(9) A caregiver [children];

(10) Caregivers shall provide adequate supervision of a child who is in the care of the child care [children in the care of the] facility.

(11) Services [of] The services to be provided within the child care facility shall be clearly stated when the application is made. A written statement of services and policies shall be given to a parent.

(12) A parent or parent [parents];

(13) [Parents or persons exercising custodial control of a child shall be permitted to visit the child care facility during regular hours of operation.]

(14) The director of the child care facility [of the facility] shall be responsible for the following:
   (a) Development of a child care program [which] meets the requirements of this administrative regulation, 922 KAR 2:090 and [995 KAR 2:090], 922 KAR 2:120 and [995 KAR 2:130];
   (b) Development of child care facility plans, policies and procedures;
   (c) Supervision of;
      1. Personnel and employee [their] conduct at the child care facility;
      2. Implementation [carrying out] of personnel policies;
      3. Scheduling daily activities; and
      4. Management of staff meetings;
   (d) Evaluation of [the] instructional activity (activities) of staff;
   (e) Assurance that additional staff are [is] available during cooking or cleaning hours if necessary to maintain staff-to-child ratios pursuant to [staff-to-child ratios as governed] 922 KAR 2:120, Section 1; and
   (f) Provision for the health, safety and comfort of a child;
   (g) Immediate notification of a medical emergency to the;
      1. Parent;
      2. Person exercising custodial control; or
      3. If the parent or person exercising custodial control is unavailable, family physician;
   (h) Assurance that a new employee or new volunteer shall not be left alone with a child if the license has not received the results of the new
   (i) Employee or volunteer’s criminal records check conducted by the Justice Cabinet or Administrative Office of the Courts; and
   (j) Employee’s child abuse or neglect check conducted by the Cabinet for Families and Children; and
   (k) Assurance that each mandatory record specified in Section 2 of [this administrative regulation has not been altered or falsified.]

Section 2. Records. (1) The following records shall be maintained at the child care facility for five (5) years:

(a) Sufficient records to;
   1. Identify a child enrolled in the child care facility;
   2. Identify the individual children and to Enable the person in charge to contact;
      a. A parent or person exercising custodial control at;
         (i) Communicate with the parents or persons designated as being responsible for the child either at their Home; or
         (ii) Place of employment; and
      b. [in a medical emergency; with] The family physician during a medical emergency;
   (b) A [each] child’s medical history, along with authorization for emergency medical care, signed by the parent or person exercising custodial control [guardian] and left with the child care facility director at enrollment;
   (c) Except as provided in KRS 214.036, a current immunization certificate showing that the child is immunized pursuant to [in accordance with 902 KAR 2:090 shall be on file within thirty (30) days of admission;
   (d) Permission forms for a trip [trips] off the premises signed by the parent or person exercising custodial control [guardian];
   (e) Daily attendance records including the arrival and departure time of a child [of children];
   (f) For each employee;
      1. A copy of the results of a negative tuberculin skin test;
      2. [or] Chest x-ray prior to employment and every two (2) years thereafter; or
   (g) A written statement prior to employment and every two (2) years thereafter documenting the individual is free from tuberculosis;
   (h) A written schedule of staff working hours;
   (i) Written record [records] of training participation for each child care center employee, including the training source, location, date, and number of clock hours obtained;
   (j) A written plan for staff development;
   (k) A written record of quarterly fire, earthquake and tornado drills;
   (l) A written plan and [or] diagram outlining the course of action in the event of natural or manmade disaster occurred in a prominent place.
   (m) A written record of complaints to the facility director in Section 4(1) of this administrative regulation; and
   (n) The child care facility shall post the following in a conspicuous place [to be available for public inspection];
      1. A copy of the;
         a. Statement of deficiency report the child care [statement of deficiencies reports the] facility has received from the Cabinet for Health Services; and
      2. A plan [plan] of correction for the licensure year. An interested party shall be permitted to inspect;
   (i) A child care facility file relating to the deficiency statement; and
   (j) Plan [and permit interested parties to inspect the facility files relating to deficiency statements and plans] of correction;
   2. A description of the services currently provided by the child care facility;
   3. A list of [listing of the] rates currently charged for services provided by the child care facility;
   4. A list of items that [listing together with the charges for the] services and items not included in the basic rate for which parents may be charged separately from the basic rate for child care;
   5. A copy of [children] and parental rights pursuant to KRS 199.889.

(2) Subsection (1) of this section shall not be construed to limit access to public records otherwise allowed pursuant to the provisions of KRS 61.672 to 61.884.

Section 3. Staff Requirements. (1) A director of a Type I facility providing child care shall:

(a) Be twenty-one (21) years of age;
(b) Have a high school diploma or a General Equivalency Diploma (GED);
(c) Not be employed in a position other than a child care director during the hours the day care facility is in operation; and
(d) Meet one (1) of the following requirements:
   1. Master's degree in Early Childhood Education and Development;
   2. Bachelor's degree in Early Childhood Education and Development;
   3. Bachelor's degree or a bachelor's degree in a field other than Early Childhood Education and Development including a degree [degrees] in pastoral care and counseling, plus twelve (12) clock hours of child development training;
4. Associate degree in Early Childhood Education and Development;
5. Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and [plus] two (2) years of verifiable full-time paid experience working directly with children in:
   a. A school-based program following Department of Education guidelines;
   b. An early childhood development program (head start); or
   c. A licensed or certified child day care;
6. Child development associate (CDA) plus one (1) year of verifiable paid experience working directly with children in:
   a. School-based program following Department of Education guidelines;
   b. An early childhood development program (head start); or
   c. Licensed or certified child day care;
7. Diploma in Child Development Services from Kentucky Tech (Dictionary of occupational title: Director: preschool; Teacher: preschool; or
8. Three (3) years of verifiable full-time paid experience working directly with children in:
   a. School-based program following Department of Education guidelines;
   b. An early childhood development program (head start); or
   c. Licensed or certified child day care;[5]
   (2) A director of a Type II facility providing child care shall:
   (a) Meet the requirements for a Type I facility; or
   (b) Be twenty-one (21) years of age;
   (c) Have a high school diploma or GED;
   (d) Have twelve (12) hours of orientation and child development training;
   (e) Not be employed in a position other than a child care director during the hours the day care facility is in operation; and
   (f) Meet one (1) of the following requirements:
      1. Certificate in child development services from Kentucky Tech or local school system (Dictionary of occupational title, child care assistant);
2. One (1) year of verifiable paid experience working directly with children in:
   a. School-based program following Department of Education guidelines;
   b. [An] Early childhood development program (head start); or
   c. Licensed or certified child day care; or
3. Obtain six (6) additional hours of training in child day care program administration.
4. A director of a licensed child care facility providing child day care on the effective date of this administrative regulation shall be deemed to have met the qualifications under subsection (1) and (2) of this section.
5. The following staff requirements shall apply to a child care facility:
   (a) A child care facility shall not employ a person convicted of an act involving the abuse, neglect or exploitation of a child or adult; or
   (b) A staff person present with the children shall be on duty who is currently certified in:
      1. Infant and child cardiopulmonary resuscitation (CPR) by a agency approved by the Cabinet for Health Services or Board of Emergency Services;[1]
         a. The American Red Cross;
         b. The American Safety Council; or
         c. The American Heart Association;
      2. Infant and child first aid by an agency approved by the Cabinet for Health Services or Board of Emergency Services;
      (c) Infant and child cardiopulmonary resuscitation (CPR) and first aid:
         a. The American Red Cross; or
         b. The American Safety Council;
5. This subsection shall be enforced beginning July 1, 1994. This subsection may be revised by administrative regulation to a date prior to July 1, 1994, contingent upon adequacy of training in all areas of the Commonwealth:
4. This training shall be in addition to the twelve (12) clock hours requirement in subsection (5) [subsections (1) and (3)] of this section;
(d) [c] One (1) adult shall be designated as being in charge. If the director is not present in the child care facility, the adult in charge shall carry out the duties of the director;
(e) In a Type I facility, [c] a minimum of two (2) qualified substitutes shall be available in case of need. If a qualified substitute works in more than one (1) licensed child care center under different ownership, the individual shall:
   1. Demonstrate proof that the individual is free from tuberculosis;
   2. Obtain twelve (12) hours of child development training annually;
   3. Submit no less than annually to a criminal records check conducted by the Administrative Office of the Courts or Justice Cabinet and a child abuse or neglect check conducted by the cabinet;
   4. Not have been convicted of a violent or sex crime;
   5. Not have had an incident of abuse or neglect of a child substantiated by the cabinet and have been provided or is provided with an opportunity to appeal the substantiation to an administrative or judicial body; and
   a. The individual waived the right to appeal the substantiation;
   b. The substantiated incident was upheld by an administrative or judicial body;
5. Not be on the Nurse's Aid Abuse Registry by the Inspector General's Office; and
6. Present to each licensed child care center upon employment as a substitute:
   (a) Proof that the individual is free of tuberculosis;
   (b) Documentation that the individual has met the annual training requirement; and
   (c) A copy of the results of the most recent:
      (i) Criminal records check; and
      (ii) Child abuse or neglect check;
   (f) In a Type II facility:
      1. At least one (1) qualified substitute shall be available in case of need;
   2. If the operator of the Type II facility is unable to provide care, the type I facility shall close temporarily;
5. [g] The minimum of adult workers in a child care facility shall be sufficient to ensure that:
   1. Minor [minors] under eighteen (18) years of age and student trainees are under direct supervision; and
   2. A person under the age of sixteen (16) shall not be counted as staff for the staff-to-child ratio;
(h) Except for medication prescribed by a physician, a controlled substance [f] [controlled substances] or alcohol use shall not be permitted on the premises during hours of operation;
   (i) [g] Smoking shall:
      1. Be permitted only in designated areas; and
      2. Not be permitted in the presence of a child;
   (j) A staff member [away from the children;]
   (k) Staff members] shall remain awake while on duty except pursuant to [as specified in] S 22 KAR 2:120, Section 15(f); and
   (l) A child care [f] [require for-a facility that is the full-time residence of the licensee and has another adult (that-educate) living in the home shall have on file at the facility a:
      1. Criminal records check; and
      2. Tuberculosis skin test or, if positive, results of a chest x-ray, or physician's statement documenting that the individual is free of tuberculosis;
5. Six (6) [Twelve (12)-clock] hours of orientation within the first (3) months and six (6) additional hours of [and] child development training shall be obtained during the first year of employment in a licensed child care center by a staff person who has supervisory authority over a child. [and] Twelve (12) clock hours of annual training [thereafter] shall be required for each subsequent year of employment in a licensed child care center and shall be documented in writing by
the trainer.

Section 4. Reports [Made to the Cabinet for Families and Children]. (1) The following shall be reported to the Cabinet for Health Services and other agencies specified in this section within twenty-four (24) hours:
(a) Communicable disease to the local health department pursuant to [in accordance with] KRS 214.010;
(b) An accident or injury requiring [extensive] medical care, hospitalization, or resulting in death;
(c) An incident that results in legal action by or against the child care facility that [facility which] affects a child or personnel; and
(d) An incident involving fire or other emergency.
(2) An incident of child abuse or neglect [neglect or dependency] shall be reported to the Cabinet for Families and Children pursuant to [as specified in] KRS Chapter 620.
(3) A change of director shall be reported within one (1) week.
(4) Written notification of the following shall be made to the Cabinet for Health Services to allow for approval before implementation:
(a) Change of ownership;
(b) Change of location;
(c) Increase in capacity;
(d) Change in hours of operation; [and]
(e) Change of services in the following categories:
   1. Infant;
   2. Toddler;
   3. Two (2) years to school-age;
   4. School-age;
   5. Nighttime care; and
   6. Transportation.
(5) The Cabinet for Health Services and parent of a child in care shall receive notice from a child care facility as soon as practicable and prior to a child care facility's temporary or permanent closure.

DIETRA PARIS, Commissioner
VIOLA P. MILLER, Secretary
HIREN DESAI, Attorney
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, 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 December 14, 2000, 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. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes general requirements for child care facility licensure; specifies how records shall be maintained; specifies staff requirements; and specifies to whom certain incidents shall be reported.
(b) The necessity of this administrative regulation: This administrative regulation establishes general requirements for child care facility licensure.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 199.896 by establishing general requirements for child care facility licensure.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This revised administrative regulation complies with the statutory intent of KRS 199.696.
(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 require that a child care center not allow a new employee or new volunteer to be left alone with a child if the results of the new employee or volunteer's criminal record check and employee's child abuse or neglect check have not been received by the center. This administrative regulation is also being amended to clarify that each mandatory record kept by a child care center not be altered or falsified; clarifies that an agency approved by the Cabinet for Health Services may provide cardiopulmonary resuscitation (CPR) and first aid to child care center staff; clarifies that a type II facility shall have at least 1 qualified substitute or close temporarily if the operator is unable to provide care; and requires that a child care center notify the Cabinet for Health Services and parents as soon as practicable and prior to a facility's temporary or permanent closure. This administrative regulation has been updated for compliance with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation is being amended to clarify child care policy changes and comply with the statutory intent of KRS 199.896.
(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation complies with KRS 199.896 by specifying general requirements for child care facility licensure.
(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation specifies general requirements for child care facility licensure.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected include currently licensed child care facilities. Total: 2,087
(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: The amendment clarifies general requirements for licensed child care facilities.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Cabinet for Families and Children has budgeted $2,241,100 in fiscal year 2001 for a contract with the Cabinet for Health Services to carry out responsibilities related to child care facility licensure. The budgeted amount specified in the contract will be used to assume any cost impact of the provisions of this amended administrative regulation.
(b) On a continuing basis: The Cabinet for Families and Children has budgeted $2,260,600 in fiscal year 2002 for a contract with the Cabinet for Health Services to carry out responsibilities related to child care facility licensure. The budgeted amount specified in the contract will be used to assume any cost impact of the provisions of this amended administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 100% federal funds from the Child Care and Development 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: This administrative regulation will not require an increase in fees or funding.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not address fees.
(9) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide.
CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development

(Amendment)

922 KAR 2:120. Child care facility health and safety standards.

RELATES TO: KRS 17.165, 186.020, Chapter 189, 199.894 to 199.898, 211.350 to 211.580, 281.000, EO 2000-1104.
NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.896(2) grants authority to the Cabinet for Families and Children to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish requirements for health and safety standards for child day care facilities.

Section 1. Child Care Services. (1) Minimum staff-to-child ratios and group size for an operating child care facility shall be maintained as follows:

<table>
<thead>
<tr>
<th>Age of Children</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birth - 1 year</td>
<td>[1 staff for 6 children]</td>
</tr>
<tr>
<td>1 to 2 years</td>
<td>1 staff for 6 children</td>
</tr>
<tr>
<td>2 to 3 years</td>
<td>1 staff for 10 children</td>
</tr>
<tr>
<td>3 to 4 years</td>
<td>1 staff for 12 children</td>
</tr>
<tr>
<td>4 to 5 years</td>
<td>1 staff for 14 children</td>
</tr>
<tr>
<td>5 to 7 years</td>
<td>1 staff for 15 children</td>
</tr>
<tr>
<td>7 and older</td>
<td>1 staff for 25 children (for before and after school)</td>
</tr>
<tr>
<td></td>
<td>1 staff for 20 children (for full day of care)</td>
</tr>
</tbody>
</table>

* Maximum Group Size is applicable only to Type I facilities and shall become effective July 1, 1994.
** This provision shall become effective July 1, 1994. However, the effective date may be delayed by administrative regulation to January 1, 1994, or to a date prior to July 1, 1994, contingent upon the availability of additional federal funds for subsidized child care.

(a) In a Type I facility, a group shall:
1. Be separately maintained in a defined area unique to the group; and
2. Have [with] specific staff assigned to and responsible for the group.

(b) The age of the youngest child in the group shall determine the:
1. Staff-to-child ratio; and
2. Maximum group size; if applicable.

(c) If a child care facility is accredited or affiliated with a nationally recognized educational association that has criteria for group size and staff-to-child ratios contrary to this subsection, this subsection and subsection (d)(a) of this section shall not apply during normal school hours to a child care facility providing early childhood education to mixed-age groups of children ranging in age from two and one-half (2 1/2) to six (6) years. That is accredited or affiliated by a nationally recognized educational association which has criteria for group size and staff-to-child ratios contrary to this subsection.

(d) If a child related to the director, employee, or person under the supervision of the licensees receives care in the child care facility, the child (and director and employee's own related facilities receive care in the facility) shall be included in the staff-to-child ratio.

(2) A child care (each) facility shall maintain a child care program that assures a child will be:
(a) Adequately supervised; and
(b) Protected from [which assures that children have adequate supervision and that affirmative steps are taken to protect children from] abuse or neglect [while the children are under the supervision of employees in the facility]. The program shall include:
1. A procedure to inform child care facility staff [procedures to inform facility employees] of the laws of the Commonwealth pertaining to child abuse or neglect pursuant to [as specified under] KRS Chapter 620; and
2. Written policy that specifies procedures taught at orientation training shall be implemented by child care facility staff.

(3) The child care facility shall provide a planned program of activities;
(a) Geared to the individual needs and developmental levels of each child served;
(b) That [the children serve]. These activities shall provide experiences to [which] promote the individual child's physical, emotional, social and intellectual growth and well-being. The daily program shall be under adult supervision and provide:
1. A variety of creative activities which may include the following:
   1. Art;
   2. Music;
   3. Dramatic play;
   4. Stories and books;
   5. Science;
   6. Block building; [and]
2. Tactile activity;
3. (activities)
(b) Indoor or outdoor play in which a child makes the children make use of both small and large muscles;
4. [If] A balance of active and quiet play, including group and individual activity; and
5. An opportunity [activities; both indoors and outdoors];
6. Opportunities for a child to:
   a. Have some free choice of activities;
   b. If desired, [and to] play apart from the group at times; and
   c. If the child desires;
7. Opportunities to Practice self-help procedures in respect to;
   i. Clothing;
   ii. Toileting;
   iii. Handwashing; and
   iv. Feeding;
8. Activity areas, equipment, and materials shall be arranged so [arranged] that the child's activity is [activities are] visible to the supervising staff.
9. [If] Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.
10. Sufficient time shall be allowed for an activity so that a child may progress at his [the security of knowing what is coming next;]

(h) Sufficient time for activities and routines so that children can progress at their own developmental rate.

(7) A child shall not be required to stand or sit for a prolonged period of time;
(a) During an activity; or
(b) While waiting for an activity to start.
11. [If] No-long waiting periods between activities or prolonged periods during which children sit or sit;
12. Television or video viewing by a child [viewing-by-children] shall be limited to program related areas.
13. [If] School-age care is provided a;
(a) A separate area or room shall be provided in a Type I facility;
(b) All Child shall be provided a snack after school, and [i]
(c) Separate toilet facility [facilities] shall be provided for males and females; or
(d) Plan shall be [a plan] implemented to use the same facility [facilities] at separate times.
14. A child shall not be subjected to;
(a) Harsh or corporal physical discipline pursuant to KRS 199.896(18);
(b) Loud, profane, threatening, frightening, or abusive language; or
(c) Discipline that is associated with;
   1. Rest;
   2. Toileting; or
   3. Foods.
15. If nighttime care is provided:
(a) A child shall not be permitted to spend more than sixteen (16) hours in the child care facility during one (1) twenty-four (24) hour period. [If school-age children are served] Time spent in school shall
be included in the sixteen (16) hour limit for a school-age child served by the child care facility; (\[7\]
(a) At least one (1) staff member;
1. Shall be assigned responsibility; and
2. Provide adequate supervision for each sleeping room; (\[7\]
(c) A child [if children are] present for an extended period [extended periods] of time during their waking hours; the facility shall receive [provide] a program of well-balanced and constructive activity [activities] geared to the child's age level [age levels] and developmental needs; (of the children served);
(d) A child [children] sleeping three (3) hours or more shall sleep in:
1. Pajamas; or
2. A nightgown [nightgowns];
(e) If a child attends school from the facility, the child [School-children] shall be offered breakfast; [if they go to school from the facility];
(f) Staff shall:
1. If employed by a Type I facility, [in Type I facilities] remain awake while on duty; or (\[7\]
2. If employed by or is the operator of a Type II facility, [in Type II facilities] remain awake until every child in care is asleep.
Section 2. Health and First Aid. The needs of a [the] child shall be met as follows:
(1) First aid supplies shall:
(a) Be available to provide prompt and proper first aid treatment;
(b) Be [and] stored out of reach of a child;
(c) [children] Supplies shall be periodically inventoried to ensure the supplies [that they] are current;
(d) If reusable, be:
1.的 [Reusable items shall be] Sanitized, and
2. Maintained in a sanitary manner;
(g) [First aid supplies shall include:
1. [of] Liquid soap;
2. [of] Adhesive bandages;
3. [of] Sterile gauze;
4. [of] Medical tape;
5. [of] Scissors;
6. A thermometer;
7. [of] Tweezers;
8. [of] Thermometers;
9. [of] First aid book; and
10. [of] Disposable [latex] gloves;

(2) A child showing signs of an illness that may be communicable to others in a day-care setting shall not be admitted to the regular child care program. If a child becomes ill during the day;
(a) The child [he, she] shall be placed in a supervised area isolated from the rest of the children;
(b) The parent or [designated] person exercising custodial control shall be contacted immediately; and
(c) Arrangements shall be made to remove the child from the child care facility; (\[7\]
\(3\) Except as authorized by a licensed physician with written daily request of the parent or person exercising custodial control, prescription medication [Prescription medications] or aspirin shall not be given to a child;
4. Nonprescription medication;
(a) May be given to a child only with the written daily request of the:
1. Parent; or
2. Person exercising custodial control of the child;
(b) Shall be administered according to the instructions on the label.
(5) The child care [except as authorized by a licensed physician and with written daily request of the parent or guardian;
(a) The facility shall keep a written record of the administration of [each] medication, including;
(a) Time;
(b) Date;
(c) Amount; and
(d) [time, date, amount and] Staff giving the medication;
(6) Medication, including refrigerated [;
(b) medication, shall be stored in a separate (locked) place out of the reach of a child [children] and shall be in the original bottle and properly labeled;
(7) [;
(8) A [;
4. Nonprescription medication may be given to a child only with written daily request of parent or guardian;
(5) Each child shall be helped with personal care and cleanliness;
(9) A child is
(6) Children shall not return from the toilet to an activity [activities] without first washing hands. A child shall wash his hands with soap and [warm] running water;
1. Prior to eating; and
2. After toileting;
(10) [;
7. Staff shall insure that diapering and toilet training is [shall be:]
1. A relaxed, pleasant activity. Toilet training shall be coordinated with a parent or person exercising custodial control of the child;
1. An adequate quantity [parent or guardian];
(5) Adequate quantities of freshly laundered or disposable diapers and clean clothing shall be available;
(12) [;
9. Soiled diapers or wet clothing shall be:
(a) Changed promptly;
(b) Stored in a covered container [and stored in covered containers] temporarily; and
(c) [shall be] Washed or disposed of at least once a day;
(13) [;
(10) When a child is diapered;
(a) The child shall be placed on;
(1) A clean washable surface; or
2. Disposable covering;
(b) Individual washcloths and towels or disposable towels shall be used to thoroughly clean and dry the child's buttocks unless otherwise prescribed by a physician;
(c) Staff shall disinfect the surface after diapering;
(d) If staff wear disposable plastic gloves, gloves shall be changed and disposed of after each child is diapered and
(a) [After diapering:] Staff shall wash their hands with soap and running water [and disinfect the surface] before diapering a child;
(14) If a training chair is used, the chair shall be:
(a) Another child;
(11) If training chairs are used, they shall be emptied promptly, and
(b) Sanitized after each use;
(15) [;
(14) The infant's formula shall be prepared and provided by the parent. An exception may be made for a child care facility that;
(a) Participates in the Child and Adult Care Food Program (CACFP); or
(b) Provides formula as a 'ringe benefit to the parent;
(16) [;
(14) Bottles shall be;
(a) Individually labeled; and
(b) Promptly refrigerated;
(17) [;
(14) A child shall not be fed with a propped bottle;
(18) Except for an infant or toddler or if the child attends nighttime or extended-hours care. [;
(19) a child shall have rest periods not to exceed two (2) hours [except for infants and toddlers; and time periods during nighttime care and extended hours]. A child who does not sleep shall be permitted to play quietly after a reasonable rest period specific to the needs of the child;
(19) [;
(14) Drinking water shall be freely available to a child. If the facility does not have a drinking fountain, and an individual drinking cup shall be provided;
(20) [;
(14) Toilets are provided;
(17) Toilet articles like combs, towels or washcloths, brushes and
toothbrushes used by a child shall be individual and plainly marked;
(21) [:]
(19) The facility shall provide and serve nutritious snacks and meals;
(a) A child present at meal or snack time [times] shall be served;
(22) The child care [:]
(b) The facility shall [provide and] serve;
(c) Breakfast, or
(d) A midsnack;
(lunch and)
(d) A midafternoon snack; and
(e) If appropriate, dinner;
(23) [Breakfast or a midsnack; lunch; and a midafternoon snack and dinner, if appropriate;
(e)) There shall be at least a two (2) hour lapse, but no longer than
three (3) hours, between each meal or snack;
(24) [meals or snacks;
(d) Food prepared shall be served in a quantity [in quantities]
reflecting the developmental stage of the child. Additional portions
shall be provided upon request by the child;
(25) [ee) Food requirements shall be as follows:
(a) [h) Breakfast shall include;
(2) Milk;
2. Bread; and
3. Fruit, or
4. Vegetable; or
5. 100 percent juice;
(b) A snack [milk; bread; or fruit or vegetable or juice; or
2. Snacks shall include two (2) of the following:
1. Milk;
2. Protein;
3. Fruit or vegetable or 100 percent juice; or
4. Bread; and
(c) [milk; protein; fruit or vegetable or juice; or bread; and
3. Lunch and dinner shall include;
1. Milk;
2. Protein;
3. [milk; protein;] Two (2) vegetables or a fruit and one (1) vegetable;
and
4. Bread;
(26) If a meal or snack is not prepared by the child care facility
and the meal or snack does not meet the requirements of subsection
(25) of this section, the child care [:]
(i) If parents choose to provide food for their own child's meal or
snack, or if food is catered, the food does not meet the nutritional
requirements listed, the facility shall provide additional food necessary
to meet the [these] requirements;
(27) During each meal:
(a) [:]
(b) A child shall be seated [at eating-time] with sufficient room
to manage food and tableware; and
(b) An adult [Adults] shall be present;
(28) [with children during eating times;
(h) Individual eating utensils shall be of size or designed for use
by a child;
(29) A weekly menu shall be;
(a) Prepared;
(b) Dated;
(c) [and design that a child can handle easily;
(i) Weekly menus shall be prepared, dated and posted in advance
in a conspicuous place;
(d) [Menus shall be] Kept on file for thirty (30) days; and
(e) If a substitution is made, the change [Substitutions] shall be
noted on the menu the day of the meal service.

Section 3. Health and Sanitation. A child care facility shall meet
the provisions of this administrative regulation and if a facility is [A
facility] required to have a food service permit, the child care facility
shall be in compliance with 902 KAR 45:005, Food service code and
this section. [If the facility does not have a current food service permit
issued under the authority of the Department for Health Services, as
governed by 902 KAR 45:005; Food Service Code, it shall be in com-
pliance with the requirements of this section.]

(1) A child care facility that serves a meal shall have;
(a) A three (3) compartment sink or other equipment; and
(b) Procedures approved by the cabinet[[]] for [the purpose of]
washing and sanitizing;
1. Dishes and
2. Silverware [dishes; silverware; eating and cooking utensils]
after use.
(2) Food [supplies and protection are to be maintained as follows:
(a) Food shall;
(b) Be clean;
(b) Be free from;
1. Spoilage;
2. Adulteration; and
3. Misbranding;
(c) Be [clean; free from spoilage; free from adulteration and mis-
branding; and safe for human consumption;
(3) Not be served if the food is not hermetically sealed, nonacidic or
[and] low-acidic food that [which] has been processed in a place other
than a commercial food-processing establishment;
(a) shall not be used. Food served shall be from a source that
which is in compliance with applicable state and local laws and ad-
ministrative regulations;
(b) Be acceptable from an [-established] commercial food store;
(c) [Stores are acceptable source.
(d) Food, while being stored, prepared, displayed or served shall]
Be protected against contamination from;
1. Dust;
2. Flies;
3. [dust; flies;] Rodents and other vermin;
4. Unclean utensils and work surfaces;
5. Unnecessary handling;
6. Coughs and sneezes;
7. Flooding;
8. Drainage; and
(3) Except when being prepared and served, [(6) Potentially haz-
ardous food shall be;
(a) [I except when being prepared and served; be kept in a safe
environment for preservation;
(b) [The temperature for potentially hazardous foods shall be
Forty-five (45) degrees Fahrenheit or below; or
(c) 140 degrees Fahrenheit or above,
(4) Except when being thawed for preparation or use, [except
during necessary periods of preparation and service:
(d) frozen food shall be;
(a) Kept at a temperature of zero degrees Fahrenheit or below;
(b) If [so as to remain frozen, except when being thawed for
preparation or use;] Potentially hazardous;
1. [frozen food shall be] Thawed at refrigerator temperatures;
2. Thawed [or] under cool, potable running water;
3. [; Quick thawed as part of the cooking process; or
4. Thawed by another method satisfactory to the health authority.
(5) [e] Each cold-storage facility used for storage of perishable
food in a nonfrozen state shall be;
(a) Have an indicating thermometer; or
(b) Other appropriate temperature measuring device.
(6) [ff] Convenient and suitable sanitized utensils shall be;
(a) Provided; and
(b) Used to minimize handling of food where food is prepared.
(7) [ff] Poultry, pork and their products that [which] have not been
treated to destroy bacteria, including trichinae, shall be thoroughly
cooked.
(8) Fruits and vegetables shall be washed before cooking or serving.
(9) [ff] Meat salads, poultry salads, and cream filled pastries shall
be;
(a) Prepared with utensils that [which] are clean; and
(b) [shall; Unless served immediately, be refrigerated pending
service.
(10) [ff] Food shall be stored in;
(a) Clean racks;
(b) Shelves;
(c) [or] Other clean surfaces; or
(d) If maintained in a sanitary condition, food in nonabsorbent containers may be stored on the floor.

(11) An individual portion if it is maintained in an acceptable sanitary condition:

(f) Individual portions of food served to a child shall not be served again.

(12) Wrapped food that is wholesome and not been unwrapped may be reserved.

(13) The following shall be inaccessible to a child in care:

(a) Toxic cleaning supplies, poisons, and insecticides;

(b) Knives and sharp objects;

(c) Matches, cigarettes, lighters, and flammable liquids;

(d) Plastic bags;

(e) Litter and rubbish; and

(f) Guns and ammunition shall be stored in a locked area.

(14) Poisonous and toxic materials shall be properly identified and stored in cabinets which are used for no other purpose, or stored in a place outside food storage, food preparation, and utensil storage areas.

(b) Health and disease controls shall be in place as follows:

(a) If a person is suspected to be infected with a communicable disease for which a reasonable probability for transmission exists due to the individual's job duties, the individual shall perform these duties until the infectious condition can no longer be reasonably expected to be transmitted. Disagreement between the provider and the individual involved shall be resolved by the individual's physician or the local health department;

(b) An employee shall:

1. Maintain personal cleanliness;
2. Conform to hygienic practices while on duty;
3. Wash hands in running water with soap;
   a. [Hands shall be washed] Thoroughly before starting work;
   b. [and] As often as necessary to remove soil and contamination; and
4. An employee shall not resume work after visiting the toilet room without first washing his hands;

(c) A child care facility shall have lavatories located in or immediately adjacent to toilet rooms;

(d) Food contact surfaces of equipment and utensils used in a child care facility shall be:

1. Smooth;
2. Free of:
   a. Breaks;
   b. Open seams;
   c. Cracks;
   d. Chips;
3. Accessible for cleaning; and
4. Nontoxic;

(e) The following shall be clean and sanitary:

1. [smooth, free of breaks, open seams, cracks, chips, accessible for cleaning, and nontoxic;
2. [Eating and drinking utensils;
3. [Food contact surfaces of equipment;
4. [Exclusive of cooking surfaces of equipment; and] Food storage utensils;
5. [used in preparation or serving of food or drink shall be cleaned after each use] Cooking surfaces of equipment; and
6. [shall be kept clean] Nonfood contact surfaces of equipment;
7. A single-service article [shall be cleaned to keep them in a clean and sanitary condition. Single-service articles] shall be:
   1. Stored;
   2. Handled [stored, handled] and dispensed in a sanitary manner; and
3. [be] Used only once;
4. An effective control measure:
5. Effective control measures shall be utilized to minimize the presence of:
   1. Rodents;
   2. Flies;
   3. Roaches; and
4. [rodents, flies, roaches, and] Other vermin on the premises;
5. An opening:

(g) Openings to the outer air shall be effectively protected against the entrance of the insect by:

1. Self-closing doors;
2. Closed windows;
3. Screening;
4. Controlled air current;
5. Other effective means;

(h) Floors, walls, and ceilings shall be smooth and constructed to be easily cleanable. Walls, windows, and ceilings shall be kept clean and in good repair;

(i) A kitchen;

(j) [Kitchens] shall be adequately ventilated to the outside air;

(k) The water supply shall be:

1. Properly located;
2. Protected;
3. Adequate; and

4. Of a source approved by the local health department;

(l) Groundwater supplies for a child care facility caring for more than twenty-five (25) children shall meet the specifications of the Cabinet for Natural Resources and Environmental Protection. A child care facility caring for twenty-five (25) children or less may secure approval from the local health department;

(m) Sewage;

(n) [Sewage and solid waste shall be properly disposed of and solid waste shall be kept in suitable receptacles in accordance with public health regulations set by the local health department;

(n) [The] Cabinet for Health Services;

(o) If the adequacy of the plumbing is questioned, consultation shall be sought from the;

1. Cabinet for Natural Resources and Environmental Protection;
2. [the] Local sanitarian having jurisdiction over a child care facility;

(p) Solid waste shall be in a suitable receptacle in accordance with local, county, and state laws as governed by KRS 211.350 to 211.380;

(q) A child care facility shall be provided with adequate and conveniently located toilet and handwashing accommodations;

(a) A:

1. Each toilet shall:
   1. Be kept in clean condition;
   2. Be kept in good repair;
   3. Be lighted;
   4. Have ventilation to outside air;

2. A supply of toilet paper shall be available;

3. A lavatory:

3. A lavatory shall have hot and cold running water under pressure that [which] allows washing of hands under warm water;

4. Water temperature at a lavatory shall be used for hand washing shall not exceed 110 degrees Fahrenheit;

(u) [Soap and approved individual cloth or paper towels shall be provided;

(v) An:

6. easily cleanable, covered waste receptacle shall be available in a toilet and handwashing area] areas.

Section 4. Transportation. (1) There shall be documentation shall be available to indicate conformance to federal and state laws pertaining to:

(a) Vehicles;
(b) Drivers; and
(c) [vehicles, drivers and] Insurance as governed by KRS 281.600, 186.020 and Chapters 189 and 189A.
(2) A child care facility providing or arranging transportation service shall have a:  
(a) [Written plan and procedures;]  
(b) [written plan and procedures] Statement of transportation policies and procedures.  
(3) Transportation provided by licensed public transportation or a school bus shall:  
(a) Meet Transportation Cabinet safety inspection requirements;  
and  
(b) [shall] Be required to comply with subsections (1) and (2) of this section.  
(4) Requirements for a child care facility-owned vehicle and its facility-owned vehicles and their usage:  
(a) A twelve (12) or more passenger van or bus [vans and buses] shall display a current certification of inspection from the Transportation Cabinet on the designated window; [;]  
(b) A vehicle that requires [used to transport children, and requiring] traffic to stop while loading and unloading a child [children at their various homes along public roads] shall be equipped with a system of:  
1. Signal lamps;  
2. Identifying colors; and  
3. Words.  
(c) A car or van shall be equipped with seat belts for [each] child to be individually secured; [;]  
(d) A vehicle used to transport children shall not carry hazardous materials aboard.  
(5) The staff-to-child ratios set forth in Section 1(1) of this administrative regulation shall apply if not inconsistent under special requirements or exceptions in this section. The maximum number of children under the age of five (5) a driver shall supervise alone is four (4).  
(6) A [Each] child shall;  
1. Have a seat;  
2. Be individually seat-belted; and  
3. Remain seated while the vehicle is in motion.  
(7) A child under forty (40) inches in height shall be transported [restrained] in an approved safety seat.  
(8) If a vehicle containing a child [children] shall not be left unattended.  
(9) If a child shall not be left unattended at the site of aftercare delivery.  
(10) If the parent [;] or a person designated by the parent to accept the child [;] is not present upon delivery of the child, a prearranged written plan known to the parties shall designate where the child can be picked up.  
(11) If a person other than the designated person designated [to] receive the child is arranged, the arrangements shall be;  
(a) Made by the parent or person exercising custodial control of the child [guardian] and  
(b) Documented.  
(12) A child shall not be picked up at or delivered to a location that [which] requires crossing the street or highway unless accompanied by an adult.  
(13) A vehicle transporting a child [children] shall have the headlamps on.  
(14) A vehicle shall be refused when not being used to transport a child [children]. If emergency refueling or repair is necessary during transporting, a child [children] shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.  
(15) If the driver is not in the driver’s seat:  
(a) No [on] The engine shall be turned off;  
(b) Keys removed; and  
(c) Brake set [if the driver is not in the driver’s seat].  

Section 5. Physical Facilities. (1) The building shall be suitable for the purpose intended.  
(2) Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child used for play and the entire child care facility [exclusive of the kitchen, bathrooms, hallways, and storage areas] it shall be kept clean and in good repair.  
(3) If a portion of the building is used for a purpose [purposes] other than day care, necessary provisions shall be made to avoid interference with the day care program.  
(4) The building shall be [so] constructed;  
(a) So that the building is;  
1. Dry;  
2. [that it is dry] Adequately heated;  
3. Ventilated; and  
4. Lighted;  
(b) To ensure the following are protected:  
1. [that] Windows;  
2. Doors;  
3. Stoves;  
4. Heaters;  
5. Furnaces;  
6. Pipes; and  
7. Stairs,  
(5) An open window or door shall have a screen.  
(6) A draft-free temperature of sixty-five (65) degrees Fahrenheit to seventy-five (75) degrees Fahrenheit shall be maintained in an occupied area during winter conditions. A draft-free temperature of sixty-eight (68) degrees Fahrenheit to eighty-two (82) degrees Fahrenheit shall be maintained in an occupied area during summer conditions.  
(7) A facility shall have [are protected; that screening is provided] on windows and doors which are left open:  
(d) There shall be a minimum of one (1) toilet and one (1) wash basin for each twenty (20) children. In a boy’s bathroom, [boys’-bathrooms] urinals may be substituted for up to one-half (1/2) of the number of toilets required. A toilet facility [Toilet facilities] shall be cleaned and sanitized daily.  
(8) The kitchen shall;  
(a) Be clean; and  
(b) Be equipped for the proper;  
1. Preservation;  
2. Storage;  
3. Preparation; and  
4. Serving of food;  
(c) Except in a Type II facility when a meal is not being prepared,  
[-The kitchen shall not be used for the activity of a child.  
(9) The child care [activities of the children]:  
(f) The facility shall be equipped with a telephone accessible to a room used by a child.  
(10) If only [the rooms used by the children]:  
(g) if the only food served by the facility is an afternoon snack is served to [for the] school-age children, a kitchen shall not be required if adequate refrigeration is available.  
(11) An indoor area [an] for infants and toddlers shall be separate from an area [providing separate from areas] used by older children. The infants and toddlers may participate in activities with older children for a short period [short periods] of time.  
(12) A facility shall have [there shall be] adequate crawling space for infants and toddlers that is:  
(a) Protected from older children; and  
(b) Away from general traffic patterns of the child care facility.  
(13) A child care facility shall have a lavatory [lavatories] in or immediately adjacent to a changing [changing areas] used for infants and toddlers.  
(14) If a child care [ infant] facility provides an outdoor play area for infants and toddlers, the outdoor area shall be:  
(a) Shaded; and  
(b) Out of the traffic pattern of older children.  
(15) The Department of Housing, Buildings and Construction, and the State Fire Marshal’s Office, and Cabinet for Health Services shall be contacted concerning a planned new building, addition, or major renovation [buildings; additions; or major renovations] prior to construction.  
(16) Grounds shall be provided as follows:  
(a) An on-site outdoor play area [areas] shall be;  
1. Except for an after-school child care program located on the premises of a public or state-accredited nonpublic school, fenced for the safety of the children;  
2. [Except after-school child care programs located on the prem-
you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes staff-to-child ratios and minimum requirements regarding child care services, health and safety, first aid, sanitation, transportation, and child care facility environmental standards.
(b) The necessity of this administrative regulation: This administrative regulation establishes child care facility health and safety standards.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 199.896 by establishing child care facility health and safety standards.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This revised administrative regulation complies with the statutory intent of KRS 199.896.
(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 clarify that refrigerated medication shall be stored in a locked place; if juice is served during a meal, the juice shall be 100% percent juice; if the child care center is a Type II facility, guns and ammunition shall be stored in a locked area; and a range of temperatures from 65 to 75 degrees Fahrenheit shall be required in an area occupied by children during winter conditions and a range of temperatures from 68 to 82 degrees Fahrenheit shall be required in an area occupied by children during summer conditions. Additionally, this administrative regulation clarifies that a child shall not be subjected to corporal discipline pursuant to KRS 199.896(18); loud, profane, threatening, frightening, or abusive language; or discipline that is associated with rest, toileting, or food. This administrative regulation has also been updated for compliance with KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation is being amended to clarify child care policy changes and comply with the statutory intent of KRS 199.896.
(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation complies with KRS 199.896 by establishing child care facility health and safety standards.
(d) How the amendment will assist in the effective administration of the statutes: This amended administrative regulation specifies requirements for child care facility health and safety standards.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities affected include currently licensed child care facilities. Total: 2,087
(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 changes if it is an amendment: This amendment clarifies child care facility health and safety standards.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Cabinet for Families and Children has budgeted $2,241,100 in fiscal year 2001 for a contract with the Cabinet for Health Services to carry out responsibilities related to child care facility licensure. The budgeted amount specified in the contract will be used to assume any cost impact of the provisions of this amended administrative regulation.
(b) On a continuing basis: The Cabinet for Families and Children has budgeted $2,290,600 in fiscal year 2002 for a contract with the Cabinet for Health Services to carry out responsibilities related to child care facility licensure. The budgeted amount specified in the contract...
will be used to assume any cost impact of the provisions of this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 100% federal funds from the Child Care and Development 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: This administrative regulation will not require an increase of fees or funding.

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

(9) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide.
NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, NOVEMBER 15, 2000

KENTUCKY REAL ESTATE COMMISSION
(Repealer)

201 KAR 11:161. Repeat of 201 KAR 11:160, Hearing on failure to abide by rules and administrative regulations

RELATES TO: KRS 324.160(1), 324.170, 324.190, 324.200, 324.281(5)
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 11:160 is no longer required because KRS 324.170, 324.160, 324.151 and 324.200 clearly detail and prescribe the appropriate procedure for formal disciplinary hearings to be held regarding a licensee's failure to abide by the rules and administrative regulations adopted by the Kentucky Real Estate Commission.

Section 1. 201 KAR 11:160, Hearing on failure to abide by rules and regulations is hereby repealed.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:
(a) What this administrative regulation does: It repeals 201 KAR 11:160.
(b) The necessity of this administrative regulation: Subject matter is already covered by KRS 324.160, 324.170, 324.200 and KRS Chapter 13B and through 13A.120(2)(e), (f).
(c) How this administrative regulation conforms to the content of the authorizing statutes: Subject matter is already covered by KRS 324.160, 324.170, 324.200 and KRS Chapter 13B and through 13A.120(2)(e), (f).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Subject matter is already covered by KRS 324.160, 324.170, 324.200 and KRS Chapter 13B and through 13A.120(2)(e), (f).

(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: All licensees are potentially affected as each is potentially subject to a disciplinary finding if KRS 324.160 is violated.

(4) Provide an assessment of how much it will cost to implement this administrative regulation:
(a) Initially: No cost anticipated to implement the regulation.
(b) On a continuing basis: No cost anticipated.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed to implement this regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish or increase any fees directly or indirectly.
(9) TIERING: Is tiering applied? Tiering is not utilized as the entirety of 201 KAR 11:160 is proposed deleted. This would, and should, affect all classes equally. No reasonable criteria exists to exclude any class.

KENTUCKY REAL ESTATE COMMISSION
(New Administrative Regulation)

201 KAR 11:420. Standards for internet advertising

RELATES TO: KRS 324.117(9)
STATUTORY AUTHORITY: KRS 324.117(6), 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.117(6) requires the Real Estate Commission to establish an administrative regulation to define the manner in which licensees may utilize any Internet electronic communication for advertising or marketing. This administrative regulation establishes Internet standards.

Section 1. A real estate company's Internet home page shall include the following information:
(1) The company's full, nonabbreviated name as recorded with the Kentucky Real Estate Commission;
(2) The name of the real estate company's principal broker;
(3) Each jurisdiction where the company holds a real estate license and principal broker of the company holds a real estate license;
(4) The regulatory body where the real estate company's principal office is located;
(5) A street address and phone number for the company.

Section 2. A real estate Internet real property advertisement of a licensee, or offer or solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease shall include:
(1) The name of the licensee advertising the property or marketing services;
(2) The name of the principal broker of the company with whom the licensee is affiliated pursuant to KRS 324.010(6) and 324.010(14) or the name of the real estate company with which the licensee's license is held.

Section 3. A nonprincipal broker real estate license Internet home page shall include:
(1) The licensee's name;
(2) The principal broker with whom the licensee is affiliated or the name of the real estate company recorded with the Kentucky Real
Estate Commission with which the licensee's license is held;
(3) All jurisdictions in which the licensee holds a real estate li-
cense;
(4) The regulatory jurisdiction of the licensee's principal business
address;
(5) A street address and phone number where the licensee may be
reached.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regu-
lation shall be held on December 21, 2000, at 1 p.m., at the Kentucky
Real Estate Commission Hearing Room, 10200 Linn Station Road,
Suite 201, Louisville, Kentucky 40223. Individuals interested in being
heard at this hearing shall notify this agency in writing by December
14, 2000, five days prior to the hearing, of their intent to attend. If
no notification of intent to attend the hearing is received by that date,
the hearing may be cancelled. This hearing is open to the public. Any
person who wishes to be heard will be given an opportunity to com-
ment 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.
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: Jeffrey Blair, General Counsel, Kentucky
Real Estate Commission, 10200 Linn Station Road, Suite 201, Loui-
ville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 425-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation es-
establishes standards for advertising and marketing on the Internet.
(b) The necessity of this administrative regulation: KRS
324.117(b) indicates the legislative intent to address this issue. As the
Internet has become more prevalent throughout society, it has be-
come more utilized for real estate brokerage activity. However, special
concerns exist for internet marketing that do not exist for print adver-
tising. Specifically, print advertising almost necessarily must provide a
phone number or address to reach the licensee. A phone number or
address can be usually traced to one company or individual with the
Internet, anonymous advertising can be done through generic "screen
names" or "email addresses". In order to provide accountability for
licensees advertising on the Internet and to prevent unlicensed bro-
kerage, minimum accountability standards should be established.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: The statute (KRS 324.117(b)) provides the
Real Estate Commission specific authority to create this regulation.
(d) How this administrative regulation currently assists or will as-
sist in the effective administration of the statutes: As indicated in (1)(b)
above, the regulatory requirements make clear what disclosures are
required for Internet advertising or marketing. These requirements are
necessitated by the special nature of the Internet.
(2) If this is an amendment to an existing administrative regula-
tion, provide a brief summary of:
(a) How the amendment will change this existing administrative regu-
lation;
(b) The necessity of the amendment to this administrative regu-
lation;
(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, organiza-
tions, or state and local governments affected by this administrative regu-
lation: All entities advertising or marketing real estate on the Inter-
et will be subject to the requirements of this regulation.
(4) Provide an assessment of how the above group or groups will
be impacted by either the implementation of this administrative regula-
tion, if new, or by the change if it is an amendment: This regulation will
make clear Internet real estate advertising and marketing require-
ments.
(5) Provide an estimate of how much it will cost to implement this
administrative regulation:
(a) Initially: Estimated no cost to implement this regulation.
(b) On a continuing basis: No cost is estimated.
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: No fund-
ing needed.
(7) Provide an assessment of whether an increase in fees or fund-
ing will be necessary to implement this administrative regulation, if
new, or by the change if it is an amendment: No increase in fees or fund-
ing necessary.
(8) State whether or not this administrative regulation establishes
any fees or directly or indirectly increases any fees: This regulation
does not directly or indirectly establish or increase any fees.
(9) TIERING: Is tiering applied? Tiering is applied to the extent the
requirements apply only to licensees advertising or marketing on the
Internet. If a licensee is not advertising or marketing on the Internet,
the licensee's activity would not contribute significantly to the problem
the regulation is designed to address.

KENTUCKY REAL ESTATE COMMISSION
(New Administrative Regulation)

201 KAR 11:430. Procedure of new applicant for criminal
records background check.

RELATES TO: KRS 324.045(4)
STATUTORY AUTHORITY: KRS 324.045(4), 324.281(5),
324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.045(4)
authorizes the Real Estate Commission to establish an administrative
regulation which details a criminal background check prior to licen-
sure. This administrative regulation provides an administrative regu-
lation which details a criminal background check for licensure applicants
as provided in KRS 324.045(4).

Section 1. Prior to taking a licensure examination, an applicant
shall request a copy of Federal Bureau of Investigation identification
record from the Federal Bureau of Investigation pursuant to the provi-
(1) Upon receipt of the Federal Bureau of Investigation record, the
applicant shall:
(a) Submit the original Federal Bureau of Investigation identifica-
tion record to the Real Estate Commission within five (5) days of re-
cipt of the Federal Bureau of Investigation Identification record if the
identification record reveals:
1. Any felony conviction regardless of when the conviction oc-
curred; or
2. A misdemeanor conviction within the five (5) years previous to
the applicant's receipt of the Federal Bureau of Investigation Identifi-
cation record:
(b) Submit the Federal Bureau of Investigation identification record
to the Real Estate Commission at the time of application if the Federal
Bureau of Investigation Identification record does not indicate any
felony conviction at any time or misdemeanor conviction within the
previous five (5) years;
(2) If the Real Estate Commission receives a Federal Bureau of
Investigation identification record from an applicant which reveals any
felony conviction or misdemeanor conviction within the five (5) years
previous to the applicant's request for the identification record pursu-
ant to this section, the Real Estate Commission shall investigate the
conviction.
(3) Following the completion of investigation indicated, the Real
Estate Commission shall review the investigation report and the Real
Estate Commission shall:
(a) Order the applicant to appear before the commission for a
hearing pursuant to KRS 324.045 and Chapter 13B; or
(b) Allow the applicant to proceed with the licensure application
without a hearing if the Real Estate Commission determines the con-
viction does not necessitate a hearing pursuant to KRS 324.045.

(4)(a) If a hearing is ordered under Section 4 of this administrative regulation, the applicant shall appear before the Real Estate Commission or the Real Estate Commission's authorized representative pursuant to KRS Chapter 13B.

(b) The hearing shall determine whether the applicant meets the standards of KRS 324.045 and shall consider:

1. The nature of the crime;
2. Whether the crime indicates the applicant's untrustworthiness or incompetence in a manner to threaten the public interest;
3. Any evidence of honesty, truthfulness, and good reputation of the applicant;
4. Evidence of rehabilitation by the applicant since the crime;
5. Whether the applicant has received written confirmation from a principal broker willing to accept the applicant as an associate upon licensure;
6. Whether the applicant is currently under probation, parole, or other state supervision or reporting requirements as a condition of any criminal sentence; and
7. Other information relevant to the applicant's fitness to broker real estate.

(5) If an authorized representative conducts the hearing, the authorized representative shall recommend to the Real Estate Commission whether the applicant meets the standards of KRS 324.045. The Real Estate Commission may accept the recommendation, reject the recommendation and enter a separate order, or remand to the representative for further proceedings in accordance with KRS Chapter 13B.

(6)(a) Following the hearing, the Real Estate Commission shall either approve or deny the application and notify the applicant of its decision along with a brief explanation of the reasons for its decision. The applicant may proceed with the licensure application if the Real Estate Commission indicates in the order. The Real Estate Commission's order shall provide an expiration date by which the applicant must take the licensure examination. If the Real Estate Commission denies the application, the Real Estate Commission may indicate when the applicant is eligible for subsequent licensure application in the order.

(b) If the Real Estate Commission's order indicates the applicant may proceed with the licensure application, the applicant shall submit a copy of the order to the Real Estate Commission with the licensure application.

(c) Failure to produce the order shall constitute grounds to deny the licensure application.

(7) A license issued may be revoked if, while an applicant, the applicant:

(a) Receives an identification report from the FBI indicating any felony conviction at any time or misdemeanor conviction in the five years previous to the receipt of the report as indicated in this administrative regulation and does not submit the report to the Real Estate Commission for investigation;

(b) Fails to request the report as provided in this regulation when the applicant has a felony conviction, regardless of when the conviction occurred, or a misdemeanor conviction within the five (5) years previous;

(c) Receives a report which indicates a felony conviction, regardless of when the conviction occurred, or a misdemeanor conviction within the five (5) years previous to the receipt of the report, and does not submit the identification report to the Real Estate Commission for investigation prior to taking the examination;

(d) The licensee fails to submit the identification report along with the application for licensure.

RON K. SMITH, Chairperson
APPROVED BY AGENCY: October 12, 2000
FILED WITH LRC: October 16, 2000 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Jeffrey Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey Blair

(1) Provide a brief summary of:
(a) What this administrative regulation does: Creates a regulation detailing procedure for pre-licensure criminal background check as mandated by KRS 324.045
(b) The necessity of this administrative regulation: The Real Estate Commission is aware of licensees who were convicted felons who became licensed by the Real Estate Commission without a review of criminal history. The Real Estate Commission currently relies on the applicant's honesty to reveal whether he/she has a criminal record. Obviously, a licensee who has a criminal record has motivation to not provide this information could result in licensure application denial.
Other states that have enacted prelicensure criminal background checks have discovered as many as 10 applicants per month provide inaccurate information about criminal history. There is no scientific or anecdotal reason to believe Kentucky has any higher or lower number of individuals with criminal history and/or a propensity to not forthcoming in the application about criminal history. If the other state's experience is reliable, at least 100 convicted felons are becoming licensed in Kentucky without any review by the regulatory agency charged with protecting the public in this area. Real estate transactions represent the largest consumer purchase for nearly all individuals. Therefore, a dishonest individual has the ability to cause serious harm to a consumer. Licensees also deal with escrow accounts, personal financial information, and other information which makes a consumer vulnerable to a dishonest licensee. This regulation seeks to address this serious need to regulate licensure applications.
(c) How this administrative regulation conforms to the content of the authorizing statutes: Statute mandates Real Estate Commission create this regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Legislative mandate - regulation meets mandate.
(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: All pre-licensure applicants must adhere to requirements.
(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: All pre-licensure applicants must follow the procedure detailed in this regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The statutory maximum is $30 for the investigation. The Real Estate Commission will incur investigative costs to review the convictions. The Real Estate Commission already investigates convicted felons applying for licensure. As this regulation is new and no statistics exist for misdemeanor convictions for applicants, an estimate as to Real Estate Commission costs is speculative however
$5,000-$10,000 per year is a reasonable estimate.  
(b) On a continuing basis: The statutory maximum is $30 for the investigation. The Real Estate Commission will incur investigative costs to review the convictions. The Real Estate Commission already investigates convicted felons applying for licensure. As this regulation is new and no statistics exist for misdemeanor convictions for applicants, an estimate as to Real Estate Commission costs is speculative however $5,000-$10,000 per year is a reasonable estimate.  
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Real Estate Commission has reduced investigative costs in the past several years. The additional investigative costs will come from the Real Estate Commission’s general budget.  
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The legislature capped the criminal records check at $30 per applicant per application. Pursuant to the legislative enactment of this fee, it is anticipated that a fee of approximately $20 per applicant per application will initially be charged.  
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish a fee as the fee was created by the legislature in KRS 324.045. The enactment of this regulation will require a fee be paid by each applicant for licensure.  
(KENTUCKY BOARD OF OPHTHALMIC DISPENSERS  
(Repealer)  
RELATES TO: KRS 326.020  
STATUTORY AUTHORITY: KRS 326.020(3)  
NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 13:011 is no longer necessary as the board will not require that administrative regulations governing ophthalmic dispensing be posted.  
Section 1. 201 KAR 13:011, Administrative regulations to be posted, is hereby repealed.  
GRANVILLE SMITH, Chair  
APPROVED BY AGENCY: September 13, 2000  
FILED WITH LRC: November 14, 2000 at 11 a.m.  
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 28, 2000, at 1 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 19, 2000, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Nancy L. Black, Director, Division of Occupations and Professions, Post Office Box 1360, Frankfort, Kentucky 40602-1360, Phone: (502) 564-4618.  
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT  
Contact person: Nancy Black  
(1) Provide a brief summary of:  
(a) What this administrative regulation does: This regulation is being proposed to repeal the obsolete regulation on posting administrative regulations.  
(b) The necessity of this administrative regulation: To repeal the current regulation on posting administrative regulations as the board has determined that the requirement is unnecessary.  
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation repeals a requirement that the board has determined to be unnecessary.  
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of the requirement will eliminate a requirement that the board has identified as ineffective.  
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:  
(a) How the amendment will change this existing administrative regulation: Not applicable.  
(b) The necessity of the amendment to this administrative regulation: Not applicable.  
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.  
(d) How the amendment will assist in the effective administration of the statutes: Not applicable.  
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:  
(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: No impact since the regulation is being repealed.  
(5) Provide an estimate of how much it will cost to implement this administrative regulation:  
(a) Initially: No cost.  
(b) On a continuing basis: No cost.  
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.  
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable.  
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are required.  
(9) TIERING: Is tiering applied? Tiering is not applicable, as this is a repealer regulation.  
TOURISM DEVELOPMENT CABINET  
(New Administrative Regulation)  
300 KAR 2:020. Tourism Development Loan Program; criteria for making and collecting loans.  
RELATES TO: 2000 Ky. Acts ch. 549  
NECESSITY, FUNCTION, AND CONFORMITY: 2000 Ky. Acts ch. 549, Part IX, Paragraph 47 requires the Secretary of Tourism to establish criteria for the disbursement and collection of funds appropriated to the Tourism Development Loan Program. This administrative regulation established those criteria.  
Section 1. Definitions. As used in this administrative regulation, the following terms have the following meaning:  
(1) "Cash match basis" is the amount of investment by the borrower from equity or other loan sources, which is equal to or greater than the amount borrowed through the program.  
(2) "Tourism business" is a business whose primary customer base consists of individuals making a trip for pleasure or culture.  
(3) "Fixed costs" are costs incurred in acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging, improving, equipping, maintaining, or furnishing the tourism project, including site clearance and preparation.  
(4) "Authority" means the Tourism Development Finance Authority.  
(5) "Fund" is the loan fund authorized for the Tourism Develop-
Section 2. Criteria. The following criteria shall be utilized by the authority in evaluating and making loans under the Tourism Development Loan Program:

1. Fixed asset lending shall be made to qualified businesses, on a cash match basis.
2. A first, co-first, or second secured position on fixed asset collateral in favor of the authority is required of all loans.
3. Prior to final approval of any loan to be provided, and as a condition precedent thereto, the authority shall determine that the benefits to be derived by the Commonwealth and the local economic area from the establishment and operation of the eligible project will exceed the cost of providing such assistance.
4. The project proposed to be financed must be economically feasible, as determined by official action of the authority.

Section 3. Considerations. The authority shall consider and take into consideration, inter alia, the following:

1. Payrolls, and the taxes generated, at both state and local levels, by the eligible project and taxes generated by the employment and economic activity created or preserved by the eligible project;
2. The size, nature, and cost of the eligible project, including the prospect of the eligible project for attracting and retaining visitors to the Commonwealth;
3. The needs (and degree of needs) of the area in which the eligible project is to be located;
4. The financial needs of the applicant;
5. The amount of any kind of assistance, if any, to be provided to any applicant by other government agencies through tax exemption or abatement, financing assistance with industrial development bonds, and otherwise, with respect to the eligible project;
6. The amount of capital made available to the eligible project by other lenders and by the owners of the eligible project;
7. The number of projected new visitors, in the context of the size of the loan being made, attributable to the tourism project.

Section 4. Eligibility Standards. The authority, subject to the other applicable provisions of this administrative regulation, may make loans only from monies in the fund. Program loans will be made if the authority determines that:

1. The project is an eligible project and is economically sound;
2. The amount to be loaned from the fund will not exceed fifty percent of the total fixed costs of the eligible project; and
3. The amount of the loan from the fund to be repaid will be adequately secured by a mortgage, lien, assignment, or pledge, at such level of priority as the authority may require;
4. The determinations of the authority shall be conclusive for purposes of the validity of a loan commitment evidenced by an agreement of the authority;
5. Rates of interest, times of payment of interest and principal, and other terms, conditions and provisions of, and security for, program loans made from the fund pursuant to this section shall be such as the authority determines to be appropriate and in furtherance of the purpose for which the loans are made. Provided that repayments of loans shall conform to the requirements of this section;
6. The authority is authorized to take such action as may be necessary or appropriate to collect or otherwise deal with any loan.

ANN R. LATTIA, Secretary
APPROVED BY AGENCY: November 3, 2000
FILED WITH LRC: November 6, 2000 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation shall be held on December 22, 2000, at 9 a.m., local time, in the 10th Floor Conference Room of the Department of Parks, 500 Mero Street, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2000, five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: J.L. Patrick Abell, General Counsel, Tourism Development Cabinet, 600 Mero Street, Capital Plaza Tower, Room 1211, Frankfort, Kentucky 40601, Telephone: (502) 564-2172, ext. 352, Facsimile: (502) 564-1079, Email: J.L.PATRICK.ABELL@RCKY.GOV

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: J. Patrick Abell, General Counsel
1. Provide a brief summary of:
   a. What this administrative regulation does: It establishes criteria to be utilized in evaluating loan applications under the Tourism Development Loan Program.
   b. The necessity of this administrative regulation: 2000 Ky. Acts ch. 549, requires the secretary to establish criteria.
   c. How this administrative regulation conforms to the content of the authorizing statute: 2000 Ky. Acts ch. 549, requires the secretary to establish criteria.
   d. How this administrative regulation currently assists or will assist in the effective administration of the statutes: By implementing 2000 Ky. Acts ch. 549, Part IX, Paragraph 47.
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: Tourism businesses; number unknown.
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: Tourism businesses will have the ability to borrow funds.
5. Provide an estimate of how much it will cost to implement this administrative regulation:
   a. Initially: Current staff will assist the Tourism Development Finance Loan Authority in implementing the program.
   b. On a continuing basis: These nominal costs will continue on an ongoing basis.
6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: $1,500,000 in proceeds from the Economic Development Bond authorization made by the 2000 General Assembly.
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 anticipated at this time.
8. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fee or directly or indirectly increase any fee.
9. TIERING: Is tiering applied? Tiering was not used as it would be impractical for a loan program of this type.
Section 1. Applicability. (1) Notwithstanding 401 KAR 8:020, Section 2, a community water system shall submit an annual report to its customers and to the cabinet according to the requirements in this administrative regulation. The report shall contain information on the quality of the water delivered by the system and shall characterize the risks from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

2(a) An existing community water system shall deliver its first report by October 15, 1996; its second report by July 1, 2000; and subsequent reports by July 1 annually thereafter.

(b) The first report shall contain data collected during or before calendar year 1998 as prescribed in Section 2(3)(c) of this administrative regulation. Each report after the first report shall contain data collected during or before the previous calendar year.

3) A new community water system shall deliver its first report by July 1 of the year after its first full calendar year in operation. Subsequent reports shall be delivered by July 1 of each year.

4) A community water system that sells water wholesale to another community water system shall deliver the applicable information required in Section 2 of this administrative regulation to the buyer system:

(a) By April 19, 1999; by April 1, 2000; and by April 1 of subsequent years; or
(b) On a date mutually agreed upon by the seller and the purchaser. The dates shall be specifically included in a contract between the parties.

Section 2. Report Contents. The report required by this administrative regulation shall contain the information specified in this section and Section 3 of this administrative regulation.

1) Information on the source of the water delivered:

(a) The report shall identify each source of the water delivered by providing information on:

1. The type of water, either surface water, groundwater, or other specified water type; and

2. The commonly used name and location of the body of water.

(b) If a source water assessment has been completed, the report shall notify consumers of the availability of the information and how to obtain it. A system may highlight in the report significant sources of contamination in the source water area.

2) If the cabinet has performed a source water assessment of the system, the report shall include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the cabinet or written by the operator.

(2) Definitions. The report shall contain the definitions found in 401 KAR 8:010 for the following terms:

(a) Maximum contaminant level goal, or MCLG;
(b) Maximum contaminant level, or MCL;
(c) Variance and exemption, if the system is operating under a variance or an exemption issued under 401 KAR 8:060;
(d) Treatment technique, action level, maximum residual disinfectant level goal or MRLDG, or maximum residual disinfectant level or MRDL, as applicable, if the report contains data on a contaminant that the U.S. EPA has set a treatment technique, action level, MRLDG, or MRDL.

3) Information on detected contaminants:

(a) The report shall contain information on the following contaminants that are detected in the water, subject to mandatory monitoring, except Cryptosporidium:

1. The regulated contaminants that are subject to an MCL, action level, maximum residual disinfectant level, or treatment technique;
2. The unregulated contaminants for which monitoring is required by 401 KAR 8:440; and
3. Disinfection by-products or microbial contaminants for which monitoring is required by 40 CFR 141.142 and 141.143, except as provided under subsection (4)(a) of this section, and that are detected in the finished water.
(b) The data relating to the contaminants in paragraph (a) of this subsection shall be displayed in one (1) table or several adjacent tables. If a community water system includes in the report other monitoring results including a nondetected contaminant, the results shall be displayed separately.
(c) The data shall be derived from data collected to comply with cabinet and U.S. EPA monitoring and analytical requirements during calendar year 1998 for the first report, and subsequent calendar years thereafter except that:

1. If a system is allowed to monitor for regulated contaminants less often than once a year:
   a. The table shall include the date and results of the most recent sampling; and
   b. The report shall include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the administrative regulations in 401 KAR Chapter 8.
2. Data that are older than five (5) years may be reported.
3. Results of monitoring in compliance with 40 CFR 141.142 and 141.143 shall be included for only five (5) years from the date of the last sample or until the detected contaminant becomes regulated and subject to routine monitoring requirements, whichever occurs first.
(d) For detected regulated contaminants listed in Table A in this
## Table A. Converting MCL Compliance Values for Consumer Confidence Reports

<table>
<thead>
<tr>
<th>Contaminant, units</th>
<th>Traditional MCL in mg/L</th>
<th>To convert for COR, multiply by</th>
<th>MCL in CCR Units</th>
<th>MCLG in CCR Units</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Microbiological contaminants</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Total coliform bacteria</td>
<td>For a system that collects ≥ 40 samples per month: 5% of monthly samples are positive; For a system that collects &lt; 40 samples per month: 1 positive monthly sample</td>
<td>For a system that collects ≥ 40 samples per month: 5% of monthly samples are positive; For a system that collects &lt; 40 samples per month: 1 positive monthly sample</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>2. Fecal coliform and E. coli</td>
<td>A routine sample and a repeat sample are total coliform positive, and one is also fecal coliform or E. coli positive</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Radioactive contaminants</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Beta or photon emitters</td>
<td>4 mrem/yr</td>
<td>4 mrem/yr</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>6. Alpha emitters</td>
<td>15 pCi/l</td>
<td>15 pCi/l</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>7. Combined radium</td>
<td>5 pCi/l</td>
<td>5 pCi/l</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td><strong>Inorganic contaminants</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Antimony</td>
<td>.006</td>
<td>1000</td>
<td>6 ppb</td>
<td>6</td>
</tr>
<tr>
<td>9. Arsenic</td>
<td>.06</td>
<td>1000</td>
<td>50 ppb</td>
<td>n/a</td>
</tr>
<tr>
<td>10. Asbestos</td>
<td>7 MFL</td>
<td>7 MFL</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>11. Barium</td>
<td>2</td>
<td>2 ppm</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>12. Beryllium</td>
<td>.004</td>
<td>1000</td>
<td>4 ppb</td>
<td>4</td>
</tr>
<tr>
<td>13. Cadmium</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
<td>5</td>
</tr>
<tr>
<td>14. Chromium</td>
<td>.1</td>
<td>1000</td>
<td>100 ppb</td>
<td>100</td>
</tr>
<tr>
<td>15. Copper</td>
<td>AL = 1.3</td>
<td>AL = 1.3 ppm</td>
<td>1.3</td>
<td></td>
</tr>
<tr>
<td>16. Cyanide</td>
<td>.2</td>
<td>1000</td>
<td>200 ppb</td>
<td>200</td>
</tr>
<tr>
<td>17. Fluoride</td>
<td>4</td>
<td>4 ppm</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>18. Lead</td>
<td>AL = .015</td>
<td>AL = 15 ppb</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>19. Mercury, inorganic</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
<td>2</td>
</tr>
<tr>
<td>20. Nitrate</td>
<td>10</td>
<td>10 ppm</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>21. Nitrite</td>
<td>1</td>
<td>1 ppm</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>22. Selenium</td>
<td>.06</td>
<td>1000</td>
<td>50 ppb</td>
<td>50</td>
</tr>
<tr>
<td>23. Thallium</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
<td>0.5</td>
</tr>
<tr>
<td><strong>Synthetic organic contaminants including pesticides and herbicides</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24. 2,4-D</td>
<td>.07</td>
<td>1000</td>
<td>70 ppb</td>
<td>70</td>
</tr>
<tr>
<td>25. 2,4,5-TP, Silvex</td>
<td>.05</td>
<td>1000</td>
<td>50 ppb</td>
<td>50</td>
</tr>
<tr>
<td>26. Acrylamide</td>
<td>TT</td>
<td>TT</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>27. Alachlor</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
<td>0</td>
</tr>
<tr>
<td>28. Atrazine</td>
<td>.003</td>
<td>1000</td>
<td>3 ppb</td>
<td>3</td>
</tr>
<tr>
<td>29. Benzo(a)pyrene, or PAH</td>
<td>.0002</td>
<td>1,000,000</td>
<td>200 nanogram/L, or ppt</td>
<td>0</td>
</tr>
<tr>
<td>30. Carbafuran</td>
<td>.04</td>
<td>1000</td>
<td>40 ppb</td>
<td>40</td>
</tr>
<tr>
<td>31. Chlordane</td>
<td>.02</td>
<td>1000</td>
<td>2 ppb</td>
<td>0</td>
</tr>
<tr>
<td>32. Dalapon</td>
<td>.2</td>
<td>1000</td>
<td>200 ppb</td>
<td>200</td>
</tr>
<tr>
<td>33. Di(2-ethylhexyl) adipate</td>
<td>.4</td>
<td>1000</td>
<td>400 ppb</td>
<td>400</td>
</tr>
<tr>
<td>34. Di(2-ethylhexyl) phthalate</td>
<td>.006</td>
<td>1000</td>
<td>6 ppb</td>
<td>0</td>
</tr>
<tr>
<td>35. Dibromochloropropane</td>
<td>.0002</td>
<td>1,000,000</td>
<td>200 ppt</td>
<td>0</td>
</tr>
<tr>
<td>36. Dinoeb</td>
<td>.007</td>
<td>1000</td>
<td>7 ppb</td>
<td>7</td>
</tr>
<tr>
<td>37. Diquat</td>
<td>.02</td>
<td>1000</td>
<td>70 ppb</td>
<td>20</td>
</tr>
<tr>
<td>38. Dioxin, 2,3,7,8-TCDD</td>
<td>.00000003 or 3.0 X 10⁻⁸</td>
<td>1,000,000,000</td>
<td>30 ppq</td>
<td>0</td>
</tr>
<tr>
<td>39. Endoathall</td>
<td>.1</td>
<td>1000</td>
<td>100 ppb</td>
<td>100</td>
</tr>
<tr>
<td>40. Endrin</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
<td>2</td>
</tr>
<tr>
<td>41. Epichlorohydrin</td>
<td>TT</td>
<td>TT</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>42. Ethylene dibromide</td>
<td>.00005</td>
<td>1,000,000</td>
<td>50 ppt</td>
<td>0</td>
</tr>
<tr>
<td>43. Glyphosate</td>
<td>.7</td>
<td>1000</td>
<td>700 ppb</td>
<td>700</td>
</tr>
<tr>
<td>44. Heptachlor</td>
<td>.0004</td>
<td>1,000,000</td>
<td>400 ppt</td>
<td>0</td>
</tr>
<tr>
<td>45. Heptachlor epoxide</td>
<td>.0002</td>
<td>1,000,000</td>
<td>200 ppt</td>
<td>0</td>
</tr>
<tr>
<td>46. Hexachlorobenzene</td>
<td>.001</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td>47. Hexachlorocyclopentadiene</td>
<td>.05</td>
<td>1000</td>
<td>50 ppb</td>
<td>0</td>
</tr>
<tr>
<td>48. Lindane</td>
<td>.0002</td>
<td>1,000,000</td>
<td>200 ppt</td>
<td>200</td>
</tr>
<tr>
<td>49. Methoxychlor</td>
<td>.04</td>
<td>1000</td>
<td>40 ppb</td>
<td>40</td>
</tr>
<tr>
<td>VOLUME 27, NUMBER 6 – DECEMBER 1, 2000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>50. Oxamyl, or Vydane</td>
<td>.2</td>
<td>1000</td>
<td>200 ppb</td>
<td>200</td>
</tr>
<tr>
<td>51. PCBs, or Poly-chlorinated</td>
<td>.0005</td>
<td>1,000,000</td>
<td>500 ppt</td>
<td>0</td>
</tr>
<tr>
<td>biphenyls</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>52. Pentachlorophenol</td>
<td>.001</td>
<td>1000</td>
<td>1 ppb</td>
<td>0</td>
</tr>
<tr>
<td>53. Picloram</td>
<td>.5</td>
<td>1000</td>
<td>5 ppb</td>
<td>0</td>
</tr>
<tr>
<td>54. Simazine</td>
<td>.004</td>
<td>1000</td>
<td>4 ppb</td>
<td>0</td>
</tr>
<tr>
<td>55. Toxaphene</td>
<td>.003</td>
<td>1000</td>
<td>3 ppb</td>
<td>0</td>
</tr>
<tr>
<td><strong>Volatile organic contaminants</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>56. Benzene</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
<td>0</td>
</tr>
<tr>
<td>57. Bromane</td>
<td>.010</td>
<td>1000</td>
<td>10 ppb</td>
<td>0</td>
</tr>
<tr>
<td>58. Carbon tetrachloride</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
<td>0</td>
</tr>
<tr>
<td>59. Chloramines MRDL = 4</td>
<td>--</td>
<td>--</td>
<td>MRDL = 4 ppm</td>
<td>MRDL = 4</td>
</tr>
<tr>
<td>60. Chlorine MRDL = 4</td>
<td>--</td>
<td>--</td>
<td>MRDL = 4 ppm</td>
<td>MRDL = 4</td>
</tr>
<tr>
<td>61. Chlorite MRDL = .8</td>
<td>1</td>
<td>1000</td>
<td>1 ppb</td>
<td>0.8</td>
</tr>
<tr>
<td>62. Chlorine dioxide MRDL = 800</td>
<td>--</td>
<td>1000</td>
<td>MRDL = 800</td>
<td>MRDL = 800</td>
</tr>
<tr>
<td>63. Chlorobenzene</td>
<td>.1</td>
<td>1000</td>
<td>100 ppb</td>
<td>100</td>
</tr>
<tr>
<td>64. o-Dichlorobenzene</td>
<td>.6</td>
<td>1000</td>
<td>600 ppb</td>
<td>600</td>
</tr>
<tr>
<td>65. p-Dichlorobenzene</td>
<td>.075</td>
<td>1000</td>
<td>75 ppb</td>
<td>75</td>
</tr>
<tr>
<td>66. 1,2-Dichloroethane</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
<td>0</td>
</tr>
<tr>
<td>67. 1,1-Dichloroethylene</td>
<td>.007</td>
<td>1000</td>
<td>7 ppb</td>
<td>7</td>
</tr>
<tr>
<td>68. cis-1,2-Dichloroethylene</td>
<td>.07</td>
<td>1000</td>
<td>70 ppb</td>
<td>70</td>
</tr>
<tr>
<td>69. trans-1,2-Dichloroethylene</td>
<td>.1</td>
<td>1000</td>
<td>100 ppb</td>
<td>100</td>
</tr>
<tr>
<td>70. Dichloromethane</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
<td>0</td>
</tr>
<tr>
<td>71. 1,2-Dichloropropane</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
<td>0</td>
</tr>
<tr>
<td>72. Ethylbenzene</td>
<td>.7</td>
<td>1000</td>
<td>700 ppb</td>
<td>700</td>
</tr>
<tr>
<td>73. Haloacetic acids, or HAA</td>
<td>.060</td>
<td>1000</td>
<td>60 n/a</td>
<td></td>
</tr>
<tr>
<td>74. Styrene</td>
<td>.1</td>
<td>1000</td>
<td>100 ppb</td>
<td>100</td>
</tr>
<tr>
<td>75. Tetrachloroethylene</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
<td>0</td>
</tr>
<tr>
<td>76. 1,2,4-Trichlorobenzene</td>
<td>.07</td>
<td>1000</td>
<td>70 ppb</td>
<td>70</td>
</tr>
<tr>
<td>77. 1,1,1-Trichloroethane</td>
<td>.2</td>
<td>1000</td>
<td>230 ppb</td>
<td>200</td>
</tr>
<tr>
<td>78. 1,1,2-Trichloroethane</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
<td>3</td>
</tr>
<tr>
<td>79. Trichloroethylene</td>
<td>.005</td>
<td>1000</td>
<td>5 ppb</td>
<td>0</td>
</tr>
<tr>
<td>80. TTHMs, or Total trihalomethanes</td>
<td>.10/0.08*</td>
<td>1000</td>
<td>10/80* ppm</td>
<td>n/a</td>
</tr>
<tr>
<td>81. Toluene</td>
<td>1</td>
<td>ppm</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>82. Vinyl chloride</td>
<td>.002</td>
<td>1000</td>
<td>2 ppb</td>
<td>0</td>
</tr>
<tr>
<td>83. Xylenes</td>
<td>10</td>
<td>ppm</td>
<td>10</td>
<td>10</td>
</tr>
</tbody>
</table>

* After January 1, 2002, for a system that serves >10,000 people and that uses as its source surface water or groundwater under the direct influence of surface water; After January 1, 2004, for a system that serves >10,000 and that uses as its source groundwater not under the influence of surface water or that serves ≤10,000 and that uses as its source surface water or groundwater under the direct influence of surface water.

Where:
AL = Action level
MCL = Maximum contaminant level
MCLG = Maximum contaminant level goal
MFL = Million fibers per liter
MRDL = Maximum residual disinfectant level
MRDLG = Maximum residual disinfectant level goal
mmrem/yr = millirems per year, a measure of radiation absorbed by the body
n/a = Not applicable
NTU = Nephelometric turbidity units
pCi/l = picocuries per liter, a measure of radioactivity
ppm = parts per million, or milligrams per liter, mg/l
ppb = parts per billion, or micrograms per liter, µg/l
ppt = parts per trillion, or nanograms per liter
ppq = parts per quadrillion, or picograms per liter
TT = Treatment technique

1. The MCL for that contaminant expressed as a number equal to or greater than one and zero-tenths (1.0), as provided in Table A;
2. The MCLG for that contaminant, expressed in the same units as the MCL;
3. If there is no MCL for a detected contaminant, the table shall indicate that there is a treatment technique, or specify the action level, applicable to that contaminant. The report shall include the definition for treatment technique or action level, as appropriate;
4. For a contaminant subject to an MCL, except turbidity and total coliforms: the highest contaminant level used to determine compliance with 401 KAR 6:010 to 401 KAR 6:550 and the range of detected levels, as indicated in this subparagraph, expressed in the same unit as the MCL. If a result is rounded to determine compliance with the MCL, rounding shall be done before multiplying the result by the factor listed in Table A:
   a. If compliance with the MCL is determined annually or less frequently: the highest detected level at a sampling point and the range of detected levels;
   b. If compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point: the highest average of any of the sampling points and the range of all sampling points;
c. If compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the average and range of detection.
5. For turbidity reported pursuant to 401 KAR 8:150 or 401 KAR 8:160: the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 401 KAR 8:150 and 401 KAR 8:160 for the filtration technology being used. The report shall include an explanation of the reason for measuring turbidity.
6. For lead and copper: the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level;
7. For total coliform:

<table>
<thead>
<tr>
<th>Table B: Major Sources and Health Effects Language for Regulated Contaminants</th>
<th>Microbiological contaminants</th>
<th>Health Effects Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contaminant, units</td>
<td>Major Sources in Drinking Water</td>
<td>Health Effects Language</td>
</tr>
<tr>
<td>1. Total coliform bacteria</td>
<td>Naturally present in the environment.</td>
<td>Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.</td>
</tr>
<tr>
<td>2. Fecal coliform and E. coli</td>
<td>Human and animal fecal waste.</td>
<td>Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.</td>
</tr>
<tr>
<td>3. Total organic carbon</td>
<td>Naturally present in the environment.</td>
<td>Total organic carbon, or TOC, has no health effects. However, TOC provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes, or THMs, and haloacetic acids, or HAAAs. Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.</td>
</tr>
<tr>
<td>4. Turbidity</td>
<td>Soil runoff.</td>
<td>Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.</td>
</tr>
<tr>
<td>5. Beta or photon emitters</td>
<td>Decay of natural and man-made deposits.</td>
<td>Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>6. Alpha emitters</td>
<td>Erosion of natural deposits.</td>
<td>Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>7. Combined radium</td>
<td>Erosion of natural deposits.</td>
<td>Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Inorganic contaminants</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Antimony</td>
</tr>
<tr>
<td>9. Arsenic</td>
</tr>
<tr>
<td>10. Asbestos</td>
</tr>
<tr>
<td>11. Barium</td>
</tr>
<tr>
<td>12. Beryllium</td>
</tr>
<tr>
<td>13. Cadmium</td>
</tr>
<tr>
<td>14. Chromium</td>
</tr>
<tr>
<td>15. Copper</td>
</tr>
<tr>
<td>16. Cyanide</td>
</tr>
<tr>
<td>17. Fluoride</td>
</tr>
<tr>
<td>18. Lead</td>
</tr>
<tr>
<td>19. Mercury, inorganic</td>
</tr>
<tr>
<td>20. Nitrate</td>
</tr>
<tr>
<td>21. Nitrite</td>
</tr>
<tr>
<td>22. Selenium</td>
</tr>
<tr>
<td>23. Thallium</td>
</tr>
</tbody>
</table>

**Synthetic organic contaminants including pesticides and herbicides**

<p>| 24. 2,4-D | Runoff from herbicide used on row crops. | Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands. |
| 25. 2,4,5-TP, or Silvex | Residue of banned herbicide. | Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems. |
| 26. Acrylamide | Added to water during sewage or wastewater treatment. | Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer. |
| 27. Alachlor | Runoff from herbicide used on row crops. | Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer. |
| 28. Atrazine | Runoff from herbicide used on row crops. | Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties. |
| 29. Benzo(a)pyrene, or PAH | Leaching from linings of water storage tanks and distribution lines. | Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer. |
| 30. Carbofuran | Leaching of soil fumigant used on rice and alfalfa. | Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems. |
| 31. Chlorfenvinphos | Residue of banned termiticide. | Some people who drink water containing chlorfenvinphos in excess of the MCL over many years could experience problems with their blood, or nervous system, and may have an increased risk of getting cancer. |
| 32. Dalapon | Runoff from herbicide used on rights of way. | Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes. |
| 33. Di (2-ethyl-hexyl) adipate | Discharge from chemical factories. | Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties. |
| 34. Di (2-ethyl-hexyl) phthalate | Discharge from rubber and chemical factories. | Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer. |</p>
<table>
<thead>
<tr>
<th>Compound</th>
<th>Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dibromochloro-propane</td>
<td>Runoff or leaching from insecticide used on cattle, lumber, gardens.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing dibromochloropropane in excess of the MCL over many years could experience reproductive difficulties with their kidneys or liver.</td>
</tr>
<tr>
<td>Dinosine</td>
<td>Runoff or leaching from insecticide used on fruits, vegetables, alfalfa, livestock.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing dinosine in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Diazinon</td>
<td>Runoff or leaching from insecticide used on apples, potatoes, and tomatoes.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing diazinon in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Dioxin, or 2,3,7,8-TCDD</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing dioxin or 2,3,7,8-TCDD in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Endothall</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing endothall in excess of the MCL over many years could experience reproductive difficulties with their kidneys or liver.</td>
</tr>
<tr>
<td>Endrin</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing endrin in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Epichlorohydrin</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing epichlorohydrin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Ethylene dibromide</td>
<td>Discharge from metallurgical factories.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Glyphosate</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing glyphosate in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Heptachlor epoxide</td>
<td>Breakdown of heptachlor.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Hexachloro-benzene</td>
<td>Discharge from metalurgical factories.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing hexachloro-benzene in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Hexachloro-cyclopentadiene</td>
<td>Discharge from chemical factories.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing hexachlorocyclopentadiene in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Lindane</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing lindane in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Methoxychlor</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Oxamyl, or Vydane</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing oxamyl in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Poly-chlorinated biphenyls</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing poly-chlorinated biphenyls in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Pentachloro-phenol</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing pentachloro-phenol in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Picloram</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing picloram in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Simazine</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing simazine in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
<tr>
<td>Toxaphene</td>
<td>Runoff or leaching from insecticide used on cotton and cattle.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing toxaphene in excess of the MCL over many years could experience reproductive difficulties.</td>
</tr>
</tbody>
</table>

**Volatile organic contaminants**

<table>
<thead>
<tr>
<th>Compound</th>
<th>Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzene</td>
<td>Discharge from factories; leaching from gas storage tanks and landfills.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Bromate</td>
<td>Byproduct of drinking water chlorination</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Carbon tetrachloride</td>
<td>Discharge from chemical plants and other industrial activities.</td>
</tr>
<tr>
<td></td>
<td>Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience reproductive difficulties with their liver and may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Chloramines</td>
<td>Water additive used to control microbes.</td>
</tr>
<tr>
<td></td>
<td>Some people who use water containing chloramines in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines in excess of the MCL could experience reproductive difficulties.</td>
</tr>
<tr>
<td>VOLUME 27, NUMBER 6 – DECEMBER 1, 2000</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------</td>
<td></td>
</tr>
<tr>
<td>60. Chlorine</td>
<td>Water additive used to control microbes</td>
</tr>
<tr>
<td>61. Chlorite</td>
<td>Byproduct of drinking water chlorination</td>
</tr>
<tr>
<td>62. Chlorine dioxide</td>
<td>Water additive used to control microbes.</td>
</tr>
<tr>
<td>63. Chlorobenzene</td>
<td>Discharge from chemical and agricultural chemical factories.</td>
</tr>
<tr>
<td>64. o-Dichloro-benzene</td>
<td>Discharge from industrial chemical factories.</td>
</tr>
<tr>
<td>65. p-Dichloro-benzene</td>
<td>Discharge from industrial chemical factories.</td>
</tr>
<tr>
<td>66. 1,2-Dichloro-ethane</td>
<td>Discharge from industrial chemical factories.</td>
</tr>
<tr>
<td>67. 1,1-Dichloro-ethylene</td>
<td>Discharge from industrial chemical factories.</td>
</tr>
<tr>
<td>68. cis-1,2-Dichloroethylene</td>
<td>Discharge from industrial chemical factories.</td>
</tr>
<tr>
<td>69. trans-1,2-Dichloroethylene</td>
<td>Discharge from industrial chemical factories.</td>
</tr>
<tr>
<td>70. Dichloro-methane</td>
<td>Discharge from pharmaceutical and chemical factories.</td>
</tr>
<tr>
<td>71. 1,2-Dichloro-propane</td>
<td>Discharge from industrial chemical factories.</td>
</tr>
<tr>
<td>72. Ethylbenzene</td>
<td>Discharge from petroleum refineries.</td>
</tr>
<tr>
<td>73. Haloacetic acids, or HAA</td>
<td>Byproduct of drinking water disinfection.</td>
</tr>
<tr>
<td>74. Styrene</td>
<td>Discharge from rubber and plastic factories; leaching from landfills.</td>
</tr>
<tr>
<td>75. Tetrachloro-ethylene</td>
<td>Discharge from factories and dry cleaners.</td>
</tr>
<tr>
<td>76. 1,2,4-Trichloro-benzene</td>
<td>Discharge from textile-finishing factories.</td>
</tr>
<tr>
<td>77. 1,1,1-Trichloro-ethane</td>
<td>Discharge from metal degreasing sites and other factories.</td>
</tr>
<tr>
<td>78. 1,1,2-Trichloro-ethane</td>
<td>Discharge from industrial chemical factories.</td>
</tr>
<tr>
<td>79. Trichloro-ethylene</td>
<td>Discharge from metal degreasing sites and other factories.</td>
</tr>
<tr>
<td>80. TTHMs, or total trihalomethanes</td>
<td>By-product of drinking water chlorination.</td>
</tr>
<tr>
<td>81. Toluene</td>
<td>Discharge from petroleum factories.</td>
</tr>
<tr>
<td>VOLUME 27, NUMBER 6 – DECEMBER 1, 2000</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------</td>
<td></td>
</tr>
<tr>
<td>82. Vinyl chloride</td>
<td>MCL over many years could have problems with their nervous system, kidneys, or liver.</td>
</tr>
<tr>
<td>Leaching from PVC piping; discharge from plastics factories.</td>
<td></td>
</tr>
<tr>
<td>83. Xylenes</td>
<td>Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.</td>
</tr>
<tr>
<td>Discharge from petroleum factories; discharge from chemical factories.</td>
<td>Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.</td>
</tr>
</tbody>
</table>

Where:

- AL = Action level
- MCL = Maximum contaminant level
- MCLG = Maximum contaminant level goal
- MFL = Million fibers per liter
- MRDL = Maximum residual disinfectant level
- MRDLG = Maximum residual disinfectant level goal
- mrem/yr = millirems per year, a measure of radiation absorbed by the body
- n/a = Not applicable
- NTU = Nephelometric turbidity units
- µg/l = micrograms per liter
- mg/l = milligrams per liter
- mg/l = milligrams per liter
- µg/l = micrograms per liter
- ppt = parts per trillion, or nanograms per liter
- ppq = parts per quadrillion, or picograms per liter
- TT = Treatment technique

(e) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table shall contain a separate column for each service area and the report shall identify each separate distribution system. Alternatively, a system may produce separate reports tailored to include data for each service area or use another mechanism to clearly indicate the detections from the various water sources.

(f) A table shall clearly identify the data indicating violations of MCLs or treatment techniques, and the report shall contain a clear and readily understandable explanation of the violation, including the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system shall use the applicable language from Table B above for the contaminant that has a violation.

(g) For detected unregulated contaminants for which monitoring is required, except Cryptosporidium, the table shall contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reason for monitoring for unregulated contaminants.

(4) Information on Cryptosporidium, radon, and other contaminants:

(a) If the system has performed monitoring for Cryptosporidium, including monitoring performed to satisfy the requirements of 40 CFR 141.143, and the monitoring indicates that Cryptosporidium may be present in the source water or the finished water, the report shall include:
   1. A summary of the results of the monitoring; and
   2. An explanation of the significance of the results.

(b) If the system has performed monitoring for radon that indicates that radon may be present in the finished water, the report shall include:
   1. A summary of the results of the monitoring; and
   2. An explanation of the significance of the results.

(c) If the system has performed additional monitoring that indicates the presence of another contaminant in the finished water, a system shall report results that may indicate a health concern. The system shall contact the Safe Drinking Water Hotline, 800-426-4791, to determine if EPA has proposed an NPDWR or issued a health advisory for that contaminant. A detection above a proposed MCL or health advisory level indicates a possible health concern. For that contaminant, the report shall include:
   1. The results of the monitoring; and
   2. An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

(5) Compliance with 401 KAR 8:010 to 401 KAR 8:550: In addition to the requirements of subsection (3)(f) of this section, the report shall note a violation that occurred during the year covered by the report of a requirement listed below, and include a clear and readily understandable explanation of the violation, a potential adverse health effect, and the steps the system has taken to correct the violation.

(a) Monitoring and reporting of compliance data;

(b) Filtration and disinfection prescribed by 401 KAR 8:150. For a system that has failed to install adequate filtration or disinfection equipment or processes, or has failed a complete backwash or disinfection equipment or processes that constitute a violation, the report shall include the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."

(c) Lead and copper control requirements prescribed by 401 KAR 8:300. For a system that fails to take one (1) or more actions prescribed by 401 KAR 8:300, Sections 3(5), 4, 5, 6, or 7, the report shall include the applicable language of subsection (3)(f) of this section for lead, copper, or both.

(d) Treatment techniques for acrylamide and epichlorohydrin prescribed by 401 KAR 8:100, Section 2. For a system that violates the requirements of 401 KAR 8:100, Section 2, the report shall include the relevant language from subsection (3)(f) of this section.

(e) Recordkeeping of compliance data.

(f) Special monitoring requirements of 401 KAR 8:250, Section 14, and 401 KAR 8:440; and

(g) Violation of a term of a variance, and exemption, or an administrative or judicial decision.

(6) Variances and exemptions. If a system is operating under the terms of a variance or an exemption issued under 401 KAR 8:060, the report shall contain:

(a) An explanation of the reason for the variance or exemption;

(b) The date on which the variance or exemption was issued;

(c) A brief status report on the steps the system is taking to install treatment, find an alternative source of water, or otherwise comply with the terms and schedules of the variance or exemption; and

(d) A notice of opportunity for public input in the review or renewal of the variance or exemption.

(7) Additional information:

(a) The report shall contain a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water, including bottled water. This explanation may include the language of subparagraphs 1 through 3 of this paragraph, or a system may use its own comparable language. The report shall include the language of subparagraph 4 of this paragraph, as a separate paragraph.
   1. The sources of drinking water, both tap water and bottled water, include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material, and may pick up substances resulting from the presence of animals or from human activity.

2. Contaminants that may be present in source water include:
   a. Microbial contaminants, such as viruses and bacteria, that may
come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.

b. Inorganic contaminants, such as salts and metals, that can be naturally-occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.

c. Pesticides and herbicides, which may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses.

Organic chemical contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems.

d. Radioactive contaminants, which can be naturally-occurring or be the result of oil and gas production and mining activities.

3. To ensure that tap water is safe to drink, U.S. EPA prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water that shall provide the same protection for public health.

4. Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects may be obtained by calling the Environmental Protection Agency’s Safe Drinking Water Hotline (800-426-4791). The report shall include the telephone number of the owner, operator, or designee of the community water system as a source of additional information about the report.

(c) The report shall include information, including time and place of regularly scheduled board meetings, about opportunities for public participation in decisions that may affect the quality of the water.

(d) A system may include additional information deemed necessary for public education consistent with, and not detracting from, the purpose of the report.

Section 3. Additional Health Information. (1) A report shall prominently display the following language as a separate paragraph: "Some people may be more vulnerable to contaminants in drinking water than the general population, Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791)."

(2) A system that detects arsenic at levels above twenty-five (25) mg/L, but below the MCL shall:

(a) Include in its report a short information statement about arsenic, using language such as: "EPA is reviewing the drinking water standard for arsenic because of special concerns that it may not be stringent enough. Arsenic is a naturally-occurring mineral known to cause cancer in humans at high concentrations.";

(b) Write its own educational statement that shall be approved by the cabinet before including it in the report.

(3) A system that detects nitrates at levels above five (5) mg/L, but below the MCL shall:

(a) Include a short informational statement about the impacts of nitrate on children using language such as: "Nitrate in drinking water at levels above ten (10) ppm is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant, you should consult advice from your health care provider.";

(b) Write its own educational statement that shall be approved by the cabinet before including it in the report.

(4) A system that detects lead above the action level in more than five (5) percent, and up to and including ten (10) percent, of homes sampled shall:

(a) Include a short informational statement about the special impact of lead on children using language such as: "Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home’s plumbing. If you are concerned about elevated lead levels in your home’s water, you may wish to have your water tested and flush your tap for thirty (30) seconds to two (2) minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline, 800-426-4791."); or

(b) Write its own educational statement that shall be approved by the cabinet before including it in the report.

(5) A community water system that detects TTHM above 0.080 mg/L, but below the MCL in 401 KAR 8:500 as an annual average, monitored and calculated under the provision of 401 KAR 8:500, shall include health effects language prescribed by Section 2(3)(d) of this administrative regulation.

Section 4. Report Delivery and Recordkeeping. (1) Except as provided in subsection (6) of this section, a community water system shall mail or otherwise directly deliver a copy of the report to each customer.

(2) The system shall make a good-faith effort to reach consumers who do not get water bills. An adequate good-faith effort shall be tailored to the consumer who is served by the system, but is not a billing customer, such as a renter or worker. The system shall describe the good-faith efforts either in the certification required in subsection (3) of this section or when the report is submitted to the cabinet. A good-faith effort to reach consumers may be a mix of methods appropriate to the particular system, such as:

(a) Posting the report on the Internet;

(b) Mailing to postal patrons in metropolitan areas;

(c) Advertising the availability of the report in the news media;

(d) Publishing the report in a local newspaper;

(e) Posting in a public place such as a cafeteria or lunch room of a public building;

(f) Delivering of multiple copies for distribution by single-biller customers such as apartment buildings or large private employers;

(g) Delivering the report to a community organization; or

(h) Other means that accomplish the goal of notifying the consumer.

(3)(a) Within fourteen (14) days of distributing the report to its customers, but no later than the date specified in Section 1(2)(a) of this administrative regulation, the community water system shall mail a copy of the report and the certification required in paragraph (b) of this subsection to the cabinet at the following address: Division of Water, Drinking Water Branch, Attn: CCR, 14 Reilly Road, Franklin, Kentucky 40601. The system shall include a copy of the report and certification for each PWSID the system has, and shall include the name of the system and its PWSID number on all submittals. The system shall not mail the report or the certification to the cabinet until it has distributed the report to its customers.

(b) Certification.

1. The community water system shall mail a certification to the cabinet by January 19, 2000, for the first report, by October 1 for the second report, and by July 1 annually thereafter for subsequent reports.

2. The certification shall contain the following documentation. If the required documentation has been previously submitted, a system need not resubmit that information. The certification shall include the typed or printed name and title of the person responsible for the overall operation or management of the system, and shall be signed by that person.

a. The following two (2) statements that are true for the system. If the system cannot make the true statement, then it shall qualify the statement to make it true for the system:

(i) "The report was prepared and distributed according to the requirements of our system;" and

(ii) "The report contains information that is correct and consistent with the compliance monitoring data previously submitted to the Division of Water;"

b. Documentation of how and when the report was distributed to its customers. If a system serves a population of less than 10,000 and used the mailing waiver pursuant to subsection (6)(a) of this section, it shall include a copy of the report from the local newspaper, showing
the date the report was printed;

c. If the system serves a population of less than 10,000, and used the mailing waiver allowed in subsection (g)(a) of this section, a description of how the system qualified for the mailing waiver by demonstrating that it performed all three (3) actions required for the mailing waiver;

d. If the system serves a population of less than 500 and used the waiver allowed in subsection (g)(b) of this section, documentation of how it notified its customers that the report was available; and

e. A description of the system's good-faith efforts to reach its non-bill-paying customers, as required in subsection (2)(c) of this section;

(4) A community water system shall make its report available to the public upon request.

(5) By the date specified in Section 1 of this administrative regulation, a community water system serving 100,000 or more persons shall post its current year's report to a publicly-accessible site on the Internet. The version that is posted shall be identical to the report that is made available to the customers, to the extent allowed by the computer or electronic system.

(6) Waiver. A system shall document in the certification required in subsection (3)(b) of this section how it qualified for the waiver, by showing how it performed either the three (3) actions in paragraph (a) of this subsection, or the action required in paragraph (b) of this subsection, as applicable for the system's size.

(a) A community water system that serves fewer than 10,000 persons shall be waived from the mailing requirement in subsection (1)(c) of this section if the system performs the following three (3) actions before the date specified in Section 1 of this administrative regulation:

1. Publishes the report in at least one (1) newspaper serving the area in which the system is located. The version that is printed in the newspaper shall be the same as is submitted to the cabinet, to the extent allowed by the newspaper.

2. Notifies its customers that the reports will not be mailed unless requested, either in the newspapers in which the reports are published, or by another means approved by the cabinet by which the customers are notified; and

3. Makes the reports available to the public upon request.

(b) A system that serves no more than 500 persons may forego the requirements of paragraph (a)(1) and (2) of this subsection if it provides notice to its customers at least once per year before the date specified in Section 1 of this administrative regulation by mail, door-to-door delivery, or by posting in an appropriate location that the report is available upon request.

(7) A community water system shall retain a copy of its consumer confidence report and certification for at least three (3) years.

JAMES E. SICKFORGE,
Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 8 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation is scheduled for 1:30 p.m., Eastern Time, December 21, 2000, at the Auditorium, Ground Floor, Capital Plaza Tower, Wilkinson Blvd., Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by December 14, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing or the scheduled hearing date, if the hearing is cancelled. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410, Fax No.: (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates into Kentucky's administrative regulations the federal requirements in 40 CFR 141.151 to 141.155 on Consumer Confidence Reports. The federal regulation was promulgated by the U.S. Environmental Protection Agency in August 1998. It establishes new reporting requirements for community water systems: every community water system is to prepare and distribute to their customers an annual report. The report is to contain information on the quality of the water delivered by the system and shall characterize the risks from exposure to contaminants detected in the drinking water.

(b) The necessity of this administrative regulation: KRS 224.10-110 directs the Natural Resources and Environmental Protection Cabinet to develop a program for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended in 1986 and 1998, provides for the primary enforcement responsibility by states that have adopted regulations that are "no less stringent than the national primary drinking water regulations," as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility by promulgating the administrative regulations in this chapter. In August 1998, the national primary drinking water regulations were amended to add the regulations for Consumer Confidence Reports, at 40 CFR 141.150 to 141.155. To maintain Kentucky's "primary" the cabinet is required to promulgate this administrative regulation that contains the requirements of the new federal regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation promulgates into Kentucky's administrative regulations the provisions of the federal regulation, thus maintaining Kentucky's program for the purification of water for public and semipublic use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation requires that a community water system must prepare and distribute to its customers an annual report on the quality of the water provided by the system, thus assuring the customers that the water they receive meets the federal and state requirements, or notifying them of any violations. This administrative regulation will be a part of the cabinet's program for the purification of water for public and semipublic use.

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

(a) How the amendment will change this administrative regulation: Not applicable since this is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable since this is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable since this is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable since this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all community water systems. There are about 465 such systems in Kentucky, some of which are controlled or owned by local governments. Those public water systems provide drinking water to citizens of the Commonwealth.

(4) Provide an assessment of how the above group or groups will be affected by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Systems are required to prepare and distribute to their customers an annual report on the quality of the drinking water delivered to their customers. Systems shall also submit a copy of the report to the cabinet when it is distributed to their customers. The reports shall contain information on the amount of contaminants that are detected in their drinking water, and shall characterize the risks from exposure to the detected contaminants. Some systems are able to prepare the reports in-house using assistance from the Kentucky Rural Water Association or other soft-
ware packages that are available; some systems are hiring a consulting firm to prepare the report, still other smaller rural systems are having their reports prepared by an outside agency. Depending on the population served by the system, the system shall either mail or otherwise hand-deliver the report to their customers, publish the report in a local newspaper, or notify customers that the report is available upon request. The systems shall also submit to the cabinet a certification that the report was prepared and distributed to its customers and that the information in the report is correct and consistent with the compliance monitoring data previously submitted to the Division of Water. The certification shall also contain information on how and when the report was distributed, shall describe the system's good-faith effort to reach the customers, and shall include a copy of the report in the newspaper showing the date the report was printed, if the system used that mailing waiver.

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

(a) Initially: Any costs incurred by a community water system are an impact of the federal regulation, and are required of all community water systems, regardless of Kentucky's promulgating this administrative regulation. Most systems are preparing the reports in-house, with assistance from the Kentucky Rural Water Association or computer programs available to them. Those costs are relatively low, using available personnel. Some systems are having the reports prepared by consultants, at additional costs to them. For the small rural system, there are agencies available to help them prepare their reports at no cost. The majority of the costs involved are in the distribution of the reports. Systems that serve a population of more than 10,000 must mail or publish their report. If they have their bill-paying customers, or customers that receive the reports. The net costs will depend on the number of billed customers, but that requirement represents a major cost to systems. Some systems have reported that the costs for mailing the report have been $300 to $700; costs are still more for larger systems that must mail the reports to more customers. However, those larger systems have traditionally mailed annual reports of some kind to their customers, so this does not represent a new cost. Systems that serve a population of 10,000 or less may publish the report in a local newspaper, but that can cost up to $400 or more, depending on the size of the report, the size of the print used, and the circulation of the local paper. They must also notify their customers that the report will not be mailed unless requested. Some systems are making that notification in the newspaper itself, others are doing so on the monthly bills. Systems that serve a population of 500 or less are only required to notify their customers that the report is available and with that since most of them can notify by using a posting, or sending the notification with a monthly bill. Finally, systems that serve a population of greater than 100,000 must also put the reports on a publicly accessible Internet site. That cost is relatively small, since those systems already have a web-site that they use, and personnel who are able to post the information.

(b) On a continuing basis: Same as the initial costs. If a system increases its population served to above the “trigger points” of 10,000 or 500, the system will need to distribute the report appropriately for the new population size. That could represent additional costs for the system.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce this administrative regulation throughout 401 KAR Chapter 8, including this administrative regulation. In addition, the cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the cabinet’s program is no less stringent than the federal program, and the cabinet maintains “primacy” for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement only this administrative regulation. However, the cabinet has received an increase in funding from the U.S. EPA to implement other new provisions of the Safe Drinking Water Act.

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

(9) TIERING: Is tiering applied? Yes. While all community water systems are required to prepare and distribute an annual report to their customers, systems that serve a population of less than 10,000 may use a way of the requirement to mail or otherwise hand-deliver the report to all customers. Systems that serve less than 10,000 may print the report in a local newspaper instead of mailing them to all customers, if they also notify their customers that the report will not be mailed unless requested, and then also make the reports available upon request. Systems that serve a population of less than 500 may be further relieved of distribution requirements by just notifying their customers that the report is available upon request.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.151 to 141.155, which is Subpart O.
2. State compliance standards. 401 KAR 8:075.
3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires community water systems to prepare and distribute to their customers an annual report on the quality of the drinking water delivered to their customers. The federal regulation contains requirements on the content of the reports, and requirements as to how the report is to be delivered to a system's customers, depending on the population served by the system.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? Yes; some provisions relating to reporting and recordkeeping requirements are additional requirements, and the regulation requires that the report and the certification be submitted to the cabinet by the same date, July 1 of each year. In addition, one requirement relating to the report content is different than the federal requirement. The federal regulation encourages, but does not require, a water system to report to its customers data on another contaminant that was detected in the drinking water for some customers, who are citizens of the Commonwealth, that they will receive the required reports on the quality of their drinking water by the specified dates. The requirement that the report and the certification be submitted by the same date is to simplify the reporting requirements. The 2 reporting dates have been a constant source of confusion for the operators, and has resulted in violations being issued because the operators missed the first reporting date. Having one reporting date for both the report and the certification will simplify reporting for the community water systems. The additional requirement on the potential health risks for possible contaminants is to notify citizens of the Commonwealth of possible additional contaminants in their drinking water.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect all community water systems, most of which are owned or controlled by local governments.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to those affected public water systems that provide drinking water to their customers.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the
fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): Any expenditures are an impact of the federal regulation, and are required of all community water systems, regardless of Kentucky's promulgating this administrative regulation. Every community water system is required to prepare a report on the quality of its water, using the results of the analytical tests that they have already performed. Most systems are preparing the reports in-house, with assistance from the Kentucky Rural Water Association or computer programs available to them. Those costs are relatively low, using available personnel. Some systems are having the reports prepared by consultants, at additional costs to them. For the small rural system, there are agencies available to help them prepare their reports at no cost. Some systems are also using this opportunity to notify their customers of other information, beyond what is required in the report. Examples are additional public-relations and billing information. The majority of the costs involved are in the distribution of the reports. Systems that serve a population of more than 10,000 must mail their reports to their bill-paying customers, or otherwise hand-deliver the reports. The net costs will depend on the number of billed customers, but that requirement represents a major cost to systems. Some systems have reported that the costs for mailing the report have been $300 to $700; costs are still more for the larger systems. Systems that serve a population of less than 10,000 may publish the report in a local newspaper, but that can cost up to $400 or more, depending on the size of the report, the size of the print used, and the circulation of the local paper. They must also notify their customers that the report will not be mailed unless requested. Some systems are making that notification in the newspaper itself, others are doing so on the monthly bills. Systems that serve a population of less than 500 are only required to notify their customers that the report is available; there is little cost associated with that since most of them can notify by using a posting, or sending the notification with a monthly bill. Finally, systems that serve a population of greater than 100,000 must also put the reports on a publicly accessible Internet site. The cost there is relatively small, since those systems already have a website that they use, and personnel who are able to post the information.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(New Administrative Regulation)

401 KAR 8:160. Enhanced filtration and disinfection.

RELATES TO: KRS 224.10-100, 224.10-110, 40 CFR 141.74, 141.140 to 141.144

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR 141.74, 141.140 to 141.144, 141.170 to 141.175, 42 USC 300f, 300g, 300h, 300l

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the Natural Resources and Environmental Protection Cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1996 and 1996, provides for primary enforcement responsibility by states that have adopted regulations no less stringent than the national primary drinking water regulations, as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising this primary enforcement responsibility. This administrative regulation establishes additional requirements for filtration and disinfection for a system that serves more than 10,000 persons, and is being promulgated to enable Kentucky to continue to have primary enforcement responsibility for the federal requirements.

Section 1. Applicability. (1) This administrative regulation shall be considered a national primary drinking water regulation. This administrative regulation establishes requirements for filtration and disinfection that are in addition to the criteria in 401 KAR 8:150 under which filtration and disinfection are required for a public water system that uses surface water or groundwater under the direct influence of surface water.

(2) Beginning January 1, 2002, unless otherwise specified in this administrative regulation, this administrative regulation shall apply to a system that serves at least 10,000 people and uses surface water or groundwater under the direct influence of surface water.

Section 2. General Provisions. (1) This administrative regulation establishes or extends treatment technique requirements instead of maximum contaminant levels for the following contaminants: Giardia lamblia, viruses, heterotrophic plate count bacteria, legionella, Cryptosporidium, and turbidity. A system that uses surface water or groundwater under the direct influence of surface water and that serves at least 10,000 people shall provide treatment of its source water that complies with these treatment technique requirements, and that are in addition to those identified in 401 KAR 8:150. The treatment technique requirements shall consist of installing and properly operating water treatment processes that reliably achieve:

(a) At least ninety-nine (99) percent, or two (2) log removal, of Cryptosporidium between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer; and

(b) Compliance with the profiling and benchmark requirements in Section 3 of this administrative regulation.

(2) A public water system subject to this administrative regulation shall be considered to be in compliance with subsection (1) of this section if it meets the applicable filtration requirements in either Section 4 of this administrative regulation or 401 KAR 8:150, Section 2 and the disinfection requirements in Section 3 of this administrative regulation and 401 KAR 8:150, Section 1.

Section 3. Disinfection Profiling and Benchmarking. (1) Determination of systems required to profile. A public water system subject to this administrative regulation shall determine its total trihalomethane, or TTHM, annual average using the procedures in paragraph (a) of this subsection and its haloacetic acid five (5), or HAA5, annual average using the procedure in paragraph (b) of this subsection. The annual average shall be the arithmetic average of the quarterly averages of four (4) consecutive quarters of monitoring.

(a) The TTHM annual average shall be the annual average during the same period as is used for the HAA5 annual average.

1. A system that collected data under the provisions of 40 CFR 141.140 to 141.144 shall use the results of the samples collected during the last four (4) quarters of required monitoring under 40 CFR 141.142.

2. A system that uses grandfathered HAA5 occurrence data that meet the provisions of paragraph (b)(2) of this subsection shall use TTHM data collected at the same time under the provisions of 401 KAR 8:500.

3. A system that uses HAA5 occurrence data that meet the provisions of paragraph (b)(3) of this subsection shall use TTHM data collected at the same time under the provisions of 401 KAR 8:500.

(b) The HAA5 annual average shall be the annual average during the same period as is used for the TTHM annual average.

1. A system that collected data under the provisions of 40 CFR 141.140 to 141.144 shall use the results of the samples collected during the last four (4) quarters of required monitoring under 40 CFR 141.142.

2. A system that collected four (4) quarters of HAA5 occurrence data that meet the routine monitoring sample number and location requirements for TTHM in 401 KAR 8:500 and handling and analytical method requirements of 40 CFR 141.142(b)(1) may use those data to determine if the requirements of this section apply.

3. A system without four (4) quarters of HAA5 occurrence data that meet the requirements of subparagraph 1 or 2 of this paragraph by March 31, 1999 shall have either:

a. Conducted monitoring for HAA5 that meets the routine monitoring sample number and location requirements for TTHM in 401 KAR 8:500 and handling and analytical method requirements of 40 CFR 141.142(b)(1) to determine if the requirements of subsection (2) of this section apply. This monitoring shall have been completed so
that the applicability determination was able to be made not later than March 31, 2000; or

b. Complied with the other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with subsection (2) of this section.

c. The system may request that the cabinet approve a more representative annual data set than the data set determined under paragraph (a) or (b) of this subsection for the purpose of determining applicability of the requirements of this section.

d. The cabinet may require that a system use a more representative annual data set than the data set determined under paragraph (a) or (b) of this subsection for the purpose of determining applicability of the requirements of this section.

(e) The system shall submit data to the cabinet according to the following schedule:

1. A system that collected TTHM and HAA5 data under 40 CFR 141.140 to 141.144, as required by paragraph (a)1 and (b)1 of this subsection, shall submit the results of the samples collected during the last twelve (12) months of required monitoring under 40 CFR 141.142 not later than December 31, 1999;

2. A system that collected four (4) consecutive quarters of HAA5 occurrence data that meet the routine monitoring sample number and location for TTHM in 401 KAR 8:500 and handling and analytical method requirements of 40 CFR 141.142(b)(1), as allowed by paragraphs (a)2 and (b)2 of this subsection, shall have submitted those data to the cabinet not later than April 16, 1999. Until the cabinet has approved the data, the system shall conduct monitoring for HAA5 using the monitoring requirements specified under paragraph (b)3 of this subsection;

3. A system that conducts monitoring for HAA5 using the monitoring requirements specified by paragraphs (a)3 and (b)3a of this subsection shall have submitted TTHM and HAA5 data no later than March 31, 2000;

4. A system that elects to comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with this section, as allowed under paragraph (b)2 of this subsection, shall have petitioned the cabinet in writing of its decision no later than December 31, 1999; or

5. If the system elects to request that the cabinet approve a more representative annual data set than the data set determined under paragraph (b)1 of this subsection, the system shall have submitted this request in writing no later than December 31, 1999.

(f) A system that has either a TTHM annual average of greater than or equal to 0.064 mg/L or an HAA5 annual average of greater than or equal to 0.04 mg/L during the period identified in paragraphs (a) and (b) of this subsection shall comply with subsection (2) of this section.

(2) Disinfection profiling.

(a) A system that meets the criteria in subsection (1)(f) of this section shall conduct a disinfection profile of its disinfection practice for a period of up to three (3) years.

(b) The system shall monitor daily for twelve (12) consecutive months to determine the total logs of inactivation for each day of operation, based on the appropriate CT values in Tables 1.1 - 1.6, 2.1, and 3.1 of 40 CFR 141.74(b), as appropriate, through the entire treatment plant. This system shall have begun this monitoring no later than April 1, 2000. As a minimum, the system will have a single point of disinfectant application before the entrance to the distribution system shall conduct the monitoring in subparagraphs 1 to 4 of this paragraph. A system with more than one (1) point of disinfectant application shall conduct the monitoring in subparagraphs 1 to 4 of this paragraph for each disinfection segment. The system shall monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in 40 CFR 141.74(a) as follows:

1. The temperature of the disinfected water shall be measured once each day at each residual disinfectant concentration sampling point during peak hourly flow;

2. If the system uses chlorine, the pH of the disinfected water shall be measured once per day at each chlorine residual disinfectant concentration sampling point during peak hourly flow;

3. The disinfectant contact time, or T, shall be determined for each day during peak hourly flow; and

4. The residual disinfectant concentration, or C, of the water be

fore or at the first customer and before each additional point of disinfection shall be measured each day during peak hourly flow.

(c) Instead of the monitoring conducted under the provisions of paragraph (b) of this subsection to develop the disinfection profile, the system may elect to meet the requirements of subparagraph 1 of this paragraph. In addition to the monitoring conducted under the provisions of paragraph (b) of this subsection to develop the disinfection profile, the system may elect to meet the requirement of subparagraph 2 of this paragraph.

1. A public water system that has three (3) years of existing operational data may submit those data, a profile generated using those data, and a request that the cabinet approve use of those data instead of monitoring under the provisions of paragraph (b) of this subsection not later than March 31, 2000. The cabinet shall determine if these operational data are substantially equivalent to data collected under the provisions of paragraph (b) of this subsection. These data shall also be representative of Garcia lambla inactivation through the entire treatment plant and not just of certain treatment segments. Until the cabinet approves this request, the system shall conduct monitoring under the provisions of paragraph (b) of this subsection.

2. In addition to the disinfection profile generated under paragraph (b) of this subsection, a public water system that has existing operational data may use those data to develop a disinfection profile for additional years. The system may use the additional yearly disinfection profiles to develop a benchmark under the provisions of subsection (3) of this section. The cabinet shall determine if these operational data are substantially equivalent to data collected under the provisions of paragraph (b) of this subsection. These data shall also be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

(d) The system shall calculate the total inactivation ratio as follows:

1. If the system uses only one (1) point of disinfectant application, the system shall determine the total inactivation ratio for the disinfection segment based on either of the following methods:

a. Determine one (1) inactivation ratio, CT\textsubscript{ref}/CT\textsubscript{sys}, before or at the first customer during peak hourly flow; or

b. Determine successive ratio values, CT\textsubscript{ref}/CT\textsubscript{sys}, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system shall calculate the total inactivation ratio by determining CT\textsubscript{ref}/CT\textsubscript{sys} for each sequence and then adding the CT\textsubscript{ref}/CT\textsubscript{sys} values together to determine their summation, or \(\Sigma(CT_{\text{ref}}/CT_{\text{sys}})\).

2. If the system uses more than one (1) point of disinfectant application before the first customer, the system shall determine the CT value of each disinfection segment immediately before the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The CT\textsubscript{ref}/CT\textsubscript{sys} value of each segment and \(\Sigma(CT_{\text{ref}}/CT_{\text{sys}})\) shall be calculated using the method in subparagraph 1 of this paragraph.

3. The system shall determine the total logs of inactivation by multiplying the value calculated in subparagraph 1 or 2 of this paragraph by three and zero-tenths (3.0).

(e) A system that uses either chloraminos or ozone for primary disinfection shall also calculate the logs of inactivation for viruses using a method approved by the cabinet.

(f) The system shall retain disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the cabinet for review as part of a sanitary survey conducted by the cabinet.

(3) Disinfection benchmarking.

(a) A system required to develop a disinfection profile under the provisions of subsections (1) and (2) of this section and that decides to make a significant change to its disinfection practice shall submit the proposed change to the cabinet for its approval before initiating any change. A significant change to disinfection practice shall be:

1. A change to the point of disinfection;

2. A change to the disinfectant used in the treatment plant;

3. A change to the disinfection process; and

4. Any other modification identified by the cabinet.

(b) A system that is modifying its disinfection practice shall calculate its disinfection benchmark using the following procedure:

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1. For each year of profiling data collected and calculated under subsection (2) of this section, the system shall determine the lowest average monthly Giardia lamblia inactivation in each year of profiling data. The system shall determine the average Giardia lamblia inactivation for each calendar month for each year of profiling data by dividing the sum of daily Giardia lamblia inactivation by the number of values calculated for that month; and

2. The disinfection benchmark shall be the lowest monthly average value, for a system with one (1) year of profiling data, or the average of lowest monthly average values, for a system with more than one (1) year of profiling data, of the monthly logs of Giardia lamblia inactivation in each year of profiling data.

(c) A system that uses either chloramines or ozone for primary disinfection shall also calculate the disinfection benchmark for viruses using a method approved by the cabinet.

(d) The system shall submit the following information to the cabinet as part of the approval process:

1. A description of the proposed change;

2. The disinfection profile for Giardia lamblia and viruses, if necessary, under subsection (2) of this section, and benchmark as required by paragraph (b) of this subsection; and

3. An analysis of how the proposed change will affect the current levels of disinfection.

Section 4. Filtration. A public water system subject to the requirements of this administrative regulation shall provide treatment consisting of both disinfection, as specified in 401 KAR 8:150, Section 1, and filtration treatment that complies with the requirements of subsections (1) and (2) of this section or 401 KAR 8:150, Section 2(2) or (3) by December 31, 2001.

(1) Conventional filtration treatment or direct filtration.

(a) For a system using conventional filtration or direct filtration, the turbidity level or representative samples of a system’s filtered water shall be less than or equal to three-tenths (0.3) NTU in at least ninety-five (95) percent of the measurements taken each month, measured as specified in 401 KAR 8:150, Section 3.

(b) The turbidity level of representative samples of a system’s filtered water shall not exceed one (1) NTU, measured as specified in 401 KAR 8:150, Section 3.

(c) A system that uses lime softening may acidify representative samples before analysis using a protocol approved by the cabinet.

(2) Filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration.

(a) A public water system may use a filtration technology not listed in subsection (1) of this section or in 401 KAR 8:150, Section 2(2) or (3), if it demonstrates to the cabinet, using a pilot plant study or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of 401 KAR 8:150, Section 1, consistently achieves ninety-nine-nine hundred (99.9) percent removal or inactivation of Giardia lamblia cysts and ninety-nine-nine hundred (99.9) percent removal or inactivation of Giardia lamblia cysts and ninety-nine-nine hundred (99.9) percent removal or inactivation of Giardia lamblia cysts and ninety-nine-nine hundred (99.9) percent removal of Cryptosporidium oocysts, and the cabinet approves the use of the filtration technology.

(b) For an approval, the cabinet shall set turbidity performance requirements that the system shall meet at least ninety-five (95) percent of the time and that the system shall not exceed at a level that consistently achieves ninety-nine-nine hundred (99.9) percent removal or inactivation of Giardia lamblia cysts and ninety-nine-nine hundred (99.9) percent removal or inactivation of viruses, and ninety-nine-nine hundred (99.9) percent removal of Cryptosporidium oocysts.

Section 5. Filtration Sampling Requirements. (1) Monitoring requirements for a system using filtration treatment. In addition to monitoring required by 401 KAR 8:150, Section 3, a public water system subject to the requirements of this administrative regulation that provides conventional filtration treatment or direct filtration shall conduct continuous monitoring of turbidity for each individual filter using an approved method in 40 CFR 141.74(a), adopted without change in Section 8 of this administrative regulation, and shall calibrate a turbidimeter using the procedure specified by the manufacturer. A system shall record the results of individual filter monitoring every fifteen (15) minutes.

(2) If there is a failure in the continuous turbidity monitoring equipment, the system shall conduct grab sampling every four (4) hours instead of continuous monitoring until the turbidimeter is repaired and back on-line. A system shall have a maximum of five (5) working days after failure to repair the equipment. If the equipment is not repaired in the five (5) days, the system shall be in violation.

Section 6. Reporting and Recordkeeping Requirements. In addition to the reporting and recordkeeping requirements in 401 KAR 8:020, Section 2(7), a public water system subject to the requirements of this administrative regulation that provides conventional filtration treatment or direct filtration shall report monthly to the cabinet the information required in this section beginning January 1, 2002. In addition to the reporting and record keeping requirements in 401 KAR 8:020, Section 2(7), a public water system subject to the requirements of this administrative regulation that provides filtration approved under Section 4(2) of this administrative regulation shall report monthly to the cabinet the information specified in subsection (1) of this section beginning January 1, 2002. The reporting in subsection (1) of this section shall be required instead of the reporting specified in 401 KAR 8:020, Section 2(7)(a).

1. Turbidity measurements as required by Section 4 of this administrative regulation shall be reported within ten (10) days after the end of each month the system serves water to the public. The following information shall be reported:

(a) The total number of filtered water turbidity measurements taken during the month;

(b) The number and percentage of filtered water turbidity measurements taken during the month that are less than or equal to the turbidity limits specified in Section 4(1) or (2) of this administrative regulation; and

(c) The date and value of a turbidity measurement taken during the month that exceeds one (1) NTU for a system using conventional filtration treatment or direct filtration, or that exceeds the maximum level set by the cabinet under Section 4(2) of this administrative regulation.

2. A system shall maintain the results of individual filter monitoring taken under Section 5 of this administrative regulation for at least three (3) years. A system shall report that it has conducted individual filter turbidity monitoring under Section 5 of this administrative regulation within ten (10) days after the end of each month the system serves water to the public. A system shall report individual filter turbidity measurement results taken under Section 5 of this administrative regulation within ten (10) days after the end of each month the system serves water to the public only if measurements demonstrate one (1) or more of the conditions in paragraphs (a) to (d) of this subsection if it demonstrates that a higher turbidity level in an individual filter is due to lime carryover only and is not due to degraded filter performance.

(a)1. For an individual filter that has a measured turbidity level of greater than one and zero-tenths (1.0) NTU in two (2) consecutive measurements taken fifteen (15) minutes apart, the system shall report the filter number, the turbidity measurement, and the date on which the exceedance occurred.

2. In addition, the system shall either:

a. Produce a filter profile for the filter within seven (7) days of the exceedance, if the system is not able to identify an obvious reason for the abnormal filter performance, and report that the profile has been produced; or

b. Report the obvious reason for the exceedance.

(b)1. For an individual filter that has a measured turbidity level of greater than five-tenths (0.5) NTU in two (2) consecutive measurements taken fifteen (15) minutes apart at the end of the first four (4) hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system shall report the filter number, the turbidity, and the date on which the exceedance occurred.

2. In addition, the system shall either:

a. Produce a filter profile for the filter within seven (7) days of the exceedance, if the system is not able to identify an obvious reason for the abnormal filter performance, and report that the profile has been
produced; or
b. Report the obvious reason for the exceedance.
   (c) For an individual filter that has a measured turbidity level of
greater than one and zero-tenths (1.0) NTU in two (2) consecutive
measurements taken fifteen (15) minutes apart during each of three
(3) consecutive months, the system shall report the filter number, the
turbidity, and the date on which the exceedance occurred.
2. In addition, the system shall conduct a self-assessment of the
filter within fourteen (14) days of the exceedance and report that the
self-assessment was conducted. The self-assessment shall consist of
at least the following components:
a. Assessment of filter performance;
b. Development of a filter profile;
c. Identification and prioritization of factors limiting filter perform-
ance;
d. Assessment of the applicability of corrections; and
   e. Preparation of a filter self-assessment report.
   (d) For an individual filter that has a measured turbidity level of
greater than two and zero-tenths (2.0) NTU in two (2) consecutive
measurements taken fifteen (15) minutes apart in each of two (2)
consecutive months, the system shall report the filter number, the
   turbidity measurement, and the date on which the exceedance
occurred.
2. In addition, the system shall arrange for the cabinet or a third
party approved by the cabinet to conduct a comprehensive perform-
ance evaluation pursuant to Section 7 of this administrative regulation
no later than thirty (30) days after the exceedance. The evaluation
shall be conducted and submitted to the cabinet no later than ninety
(90) days after the exceedance.
(3) Additional reporting requirements.
(a) If the turbidity exceeds one (1) NTU in representative samples
of filtered water in a system using conventional treatment or direct
filtration, the system shall notify the cabinet as soon as possible, but
no later than the end of the next business day.
(b) If the turbidity in representative samples of filtered water ex-
ced the maximum level set by the cabinet under Section 4(2) of this
administrative regulation for filtration technologies other than con-
ventional filtration treatment, direct filtration, slow sand filtration, or diato-
maceous earth filtration, the system shall notify the cabinet as soon as
possible, but no later than the end of the next business day.

Section 7. Comprehensive Performance Evaluation. (1) If notified
by a system pursuant to Section 8(2)(d) of this administrative regula-
tion, the cabinet or third party approved by the cabinet shall conduct a
comprehensive performance evaluation to:
(a) Identify factors that may be adversely impacting a plant's ca-
pability to achieve compliance; and
(b) Emphasize an approach that a system may be able to imple-
ment without significant capital improvements.
(2) The comprehensive performance evaluation shall consist of at
least the following:
   (a) Assessment of plant performance;
   (b) Evaluation of major unit processes;
   (c) Identification and prioritization of performance-limiting factors;
   (d) Assessment of the applicability of comprehensive technical
   assistance; and
   (e) The final report of the results of the evaluation.

Section 8. Federal Regulation Adopted Without Change. 40 CFR
141.74, as in effect on July 1, 2000, is adopted without change. The
provisions of this administrative regulation relating to analyses and
monitoring requirements shall be governed by the federal regulation.

JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 8 a.m.
PUBLIC HEARING: A public hearing on this proposed administra-
tive regulation is scheduled for 1:30 p.m. Eastern Time, December 21,
2000, at the Auditorium, Ground Floor, Capital Plaza Tower, Wilkinson
Blvd., Frankfort, Kentucky. Individuals who intend to be heard at this
hearing shall notify this agency in writing, by December 14, 2000, five
(5) workdays prior to the hearing, of their intent to attend. If no notifica-
tion of intent to attend is received by that date, the hearing may be
canceled. This hearing is open to the public. Any person who wishes
to be heard will be given an opportunity to comment on the adminis-
trative regulation. A transcript of the hearing will be made. If you re-
quest a transcript, you will be required to pay for it. If you do not wish
to be heard at the hearing, you may submit written comments on the
administrative regulation. Send written notification of your intent to be
heard at the hearing, or your written comments on the administrative
regulation, to the contact person listed below. Written comments must
be received before adjournment of the hearing or the scheduled
hearing date, if the hearing is cancelled. The hearing facility is acces-
sible to persons with disabilities. Requests for reasonable accommo-
dations, including auxiliary aids and services necessary to participate
in the hearing, may be made to the contact person at least five (5)
workdays prior to the hearing.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water,
14 Reilly Road, Frankfort, Kentucky 40601, Telephone: (502) 564-
3410, Fax No.: (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative
   regulation incorporates into Kentucky's administrative regulations
   the federal requirements in 40 CFR 141.170 - 141.175 for enhanced fil-
   tration and disinfection. The federal regulation was promulgated by
   the U.S. Environmental Protection Agency in December 1998. It estab-
   lishes additional requirements for filtration and disinfection for a public
   water system that uses surface water or groundwater under the direct
   influence of surface water as its source and that serves a population
   of more than 10,000. These requirements are in addition to those re-
   quired in 401 KAR 8:150. They include a new turbidity limit of .3 NTU
   in 95 percent of the samples, and new profiling and benchmark re-
   quirements relating to monitoring for total trihalomethanes (THM4)
   and haloacetic acids (HAA5), which are byproducts of the disinfection
   process. The new turbidity limit will ensure that Cryptosporidium is
   removed at least to the 99 percent, or 2-log removal rate. The reporting
   and record keeping requirements associated with the new
   turbidity limit require systems to install a continuous monitor at each
   filter and have a continuous recording device. The benchmarking and
   profiling requirements will allow the public water system to ensure that
   microbial protection is maintained during changes in the disinfection
   process.
   (b) The necessity of this administrative regulation: KRS 224.10-
   110 directs the Natural Resources and Environmental Protection
   Cabinet to develop a program for the regulation and control of the
   purification of water for public and semipublic use. The Safe Drinking
   Water Act, as amended in 1986 and 1996, provides for the primary
   enforcement responsibility by states that have adopted regulations "no
   less stringent than the national primary drinking water regulations," as
   well as several other criteria stipulated by the Act. The Common-
   wealth of Kentucky has adopted this primary enforcement responsibility
   by promulgating the administrative regulations in this chapter. In December 1998,
   the national primary drinking water regulations were amended to add the regulation for
   Enhanced Filtration and Disinfection, at 40 C-P-H 141.170 - 141.175. To
   maintain Kentucky's "primacy" the cabinet is required to promulgate
   this administrative regulation that contains the requirements of the
   new federal regulation.
   (c) How this administrative regulation conforms to the content of
   the authorizing statutes: This administrative regulation promulgates
   into Kentucky's administrative regulations the provisions of the federal
   regulation, thus maintaining Kentucky's program for the purification of
   water for public and semipublic use.
   (d) How this administrative regulation currently assists or will as-
   sist in the effective administration of the statutes: This administrative
   regulation provides additional filtration and disinfection requirements
   for larger public water systems that use surface water or groundwater
   under the direct influence of surface water, thus maintaining its pro-
   gram for the purification of water for public and semipublic use.
   (2) If this is an amendment to an existing administrative regulation,
   provide a brief summary of:
   (a) How the amendment will change this administrative regulation:
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Not applicable since this is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: Not applicable since this is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable since this is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: Not applicable since this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all public water systems that use surface water or groundwater under the direct influence of surface water as their source and that serve a population of more than 10,000. There are about 100 such systems in Kentucky, some of which are controlled or owned by local governments. Those public water systems provide drinking water to citizens of the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Systems are required to meet the new turbidity limit by January 1, 2002. Systems are also required to install continuous turbidity monitors and recording devices on each filter. The benchmark and profiling requirement applied soon after the promulgation of the federal regulation, in December 1998. Members of the cabinet’s drinking water technical assistance program have been working with affected public water systems since the federal regulation was promulgated. As a result, most of the affected systems are already meeting the new turbidity limits. The team members have also provided assistance in profiling and benchmarking requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The new turbidity requirements can usually be reached with just changes in processing or optimizing treatment, at little operational costs. A new continuous monitor can cost about $4,000 for each filter, with an additional $1,000 - $2,000 for the recording devices. Many systems are also totally upgrading their systems, so these additional costs are just a part of the total upgrade. The profiling and benchmarking provisions do not involve additional capital equipment, but do involve operator time and expertise.

(b) On a continuing basis: Systems will be required to maintain their continuous monitoring and recording devices, possibly requiring additional staff on a long-term basis, if the current staffing level is not sufficient.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 6, including this administrative regulation. In addition, the cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the cabinet’s program is no less stringent than the federal program, and the cabinet maintains “primacy” for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation. However, the cabinet has received an increase in funding from the U.S. EPA to implement the new provisions of the Safe Drinking Water Act, as outlined in other administrative regulations of this chapter.

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

(9) TIERING: Is tiering applied? Yes. This administrative regulation applies only to those systems that serve a population of greater than 10,000 and that use surface water or groundwater under the direct influence of surface water as their water source. In addition, sources will have until January 2002 to comply with its requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 141.170 - 141.175
2. State compliance standards. 401 KAR 8:160
3. Minimum or uniform standards contained in the federal mandate. The federal regulation contains new turbidity, benchmarking, and profiling requirements.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect some public water systems, many of which are owned or controlled by local governments.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to those affected public water systems that provide drinking water to their customers.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-): There is no anticipated effect on current revenues.
Expenditures (+/-): Any expenditures are an impact of the federal regulation, and would be imposed on a public water system, regardless of Kentucky’s promulgating this administrative regulation. A new continuous monitor can cost about $4,000 for each filter, with an additional $1,000 - $2,000 for the recording devices. Many systems are also totally upgrading their systems, so these additional costs are just a part of the total upgrade. The profiling and benchmarking provisions do not involve additional capital equipment, but do involve operator time and expertise. A public water system may decide to raise the rates it charges its customers for treated drinking water to offset the additional expenditures. However, the additional rates may not be the result of just these new administrative regulations, but may include other upgrades that the system is choosing to perform at the same time.

Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(\new Administrative Regulation)

401 KAR 8:510. Disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors.

RELATES TO: KRS 224.10-100, 224.10-110, 40 CFR 141.140 to 141.144, 142.60

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR 141.20, 141.30, 141.64, 141.65, 141.130 to 141.135, 141.140 to 141.144, 42 USC 300f, 300g, 300h, 305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 directs the Natural Resources and Environmental Protection Cabinet to enforce administrative regulations adopted by the secretary for the regulation and control of the purification of water for public and semi-public use. The Safe Drinking Water Act, as amended by the Safe Drinking Water Act Amendments of 1986 and 1996, provides for primary enforcement responsibility by states that have adopted regulations "no less stringent than the national primary drinking water regu-
lations*, as well as meeting other criteria stipulated by the Act. The Commonwealth of Kentucky has accepted and is currently exercising primary enforcement responsibility. This administrative regulation establishes maximum contaminant levels for total trihalomethanes and halocarboxylic acid five (5) to limit the levels of known and unknown disinfection byproducts, which may have adverse health effects. A provision in Section 2 of this administrative regulation relating to consecutive systems is in addition to the federal requirements. The provision clarifies how Kentucky will implement requirements for systems that purchase their water from another system. It is necessary because the federal regulation does not directly address this issue. Kentucky has required monitoring for total trihalomethanes in consecutive systems under KAR 8:650, and this administrative regulation makes the producing system responsible for the monitoring and most of the treatment. However, if the producing system is not able to eliminate the exceedance in the purchasing system, then there is a provision to require the purchasing system to make changes deemed necessary to eliminate the problem. This provision is necessary because public water systems that sell water should not be responsible for improper maintenance by the purchasing system.

Section 1. Applicability. (1) This administrative regulation shall be considered a national primary drinking water regulation.

(2) This administrative regulation establishes criteria under which:

(a) A community water system and a nontransient noncommunity water system that add a chemical disinfectant as a part of the drinking water treatment process shall modify their practices to meet maximum contaminant levels, or MCLs, and maximum residual disinfectant levels, or MRDLs, in Section 2 of this administrative regulation and shall meet the treatment technique requirements for disinfection byproduct precursors in Section 9 of this administrative regulation; and

(b) A transient noncommunity water system that uses chlorine dioxide as a disinfectant or oxidant shall modify its practices to meet the MRDL for chlorine dioxide in Section 3 of this administrative regulation.

(3) This administrative regulation establishes MCLs for TTHM and HAAs and treatment technique requirements for disinfection byproduct precursors to limit the levels of known and unknown disinfection by-products, which may have adverse health effects.

(4) Control of disinfectant residuals. The cabinet recognizes that the addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs in Section 2 of this administrative regulation, a system may increase the residual disinfectant level in the distribution system of chlorine or chloramines, but not chlorine dioxide, to a level and for the amount of time necessary to protect public health, to address a specific microbiological contamination problem caused by circumstances such as:

(a) A distribution line break;

(b) Storm run-off event;

(c) Source water contamination event; or

(d) Cross-connection event.

Section 2. Compliance Dates. (1) Community water system and nontransient noncommunity water system. Unless otherwise noted, a community water system and a nontransient noncommunity water system that uses as its source a surface water or groundwater under the direct influence of surface water shall comply with this administrative regulation by the date indicated as follows:

(a) If the system serves 10,000 or more persons: Beginning January 1, 2022;

(b) If the system serves fewer than 10,000 persons or if the system uses only groundwater not under the direct influence of surface water: Beginning January 1, 2004.

(2) Transient noncommunity water system. Unless otherwise noted, a transient noncommunity water system that uses as its source a surface water or groundwater under the direct influence of surface water shall comply with this administrative regulation by the date indicated as follows:

(a) If the system serves 10,000 or more persons and uses chlorine dioxide as a disinfectant or oxidant, the system shall comply with the requirement for chlorine dioxide in this administrative regulation beginning January 1, 2002; and

(b) If the system serves fewer than 10,000 persons and uses chlorine dioxide as a disinfectant or oxidant, the system shall comply with the requirement for chlorine dioxide in this administrative regulation beginning January 1, 2004.

(3) A system that is installing GAC or membrane technology to comply with the MCLs for disinfection byproducts may apply to the cabinet for an extension of up to twenty-four (24) months past the dates in subsections (1) and (2) of this section, but not beyond December 31, 2003. In granting the extension, the cabinet shall set a schedule for compliance and may specify any interim measure that the system shall take. Failure to meet the schedule or interim treatment requirements shall constitute a violation of this administrative regulation.

(4) Consecutive systems. Consecutive water systems shall monitor for trihalomethanes and HAAs as follows:

(a) For purposes of determining the applicability and compliance dates, the sum of the populations of the systems producing the water and the system purchasing the water shall be used.

(b) Producers.

1. A public water system that produces water and that provides water to another system shall be responsible for monitoring throughout the distribution system, which shall include the producing system and all purchasing systems. Monitoring shall be performed pursuant to this administrative regulation at a point in the purchaser’s distribution system that reflects the longest period of retention.

2. If more than one (1) system produces water sold to a distribution system, monitoring shall be divided between or among the producing systems by a plan that reflects the likely flow of each producing system’s water. A monitoring plan for total trihalomethanes and HAAs shall be submitted by all producing systems and shall be approved by the cabinet pursuant to Section 6(6) of this administrative regulation.

(c) Purchasers. A system that purchases water shall alter distribution practices necessary to alleviate any exceedance of the MCL for TTHM or HAAs anywhere in the distribution system. The altered practices may include line flushing and replacement, changes to points of disinfection, elimination of points of disinfection, tank turnover practices, or other changes to facilitate reductions in levels of contamination, and shall be approved by the cabinet before the altered practices begin. A purchasing system shall cooperate in the development of a monitoring plan required from the producing system under paragraph (b) of this subsection. A purchasing system shall monitor for maximum residual disinfectant levels, and shall submit a monitoring plan for the monitoring pursuant to Section 6(6) of this administrative regulation.

Section 3. Maximum Levels. (1) Maximum contaminant level. The maximum contaminant level or MCL for disinfection byproducts shall be:

(a) Total trihalomethanes, or TTHMs: 0.080 mg/L;

(b) Haloacetic acid five, or HAAs: 0.060 mg/L;

(c) Bromate: 0.010 mg/L; and

(d) Chlorite: one and zero-tenths (1.0) mg/L.

(2) Maximum residual disinfectant level.

(a) The maximum residual disinfectant level, or MRDL, shall be:

1. Chlorine: four and zero-tenths (4.0) mg/L as Cl₂;

2. Chloramines: four and zero-tenths (4.0) mg/L as Cl₂; and

3. Chlorine dioxide: zero and eight-tenths (0.8) mg/L as ClO₂.

(b1) For chlorine and chloramines, a public water system shall be in compliance with the MRDL if the running annual average of monthly averages of samples taken in the distribution system computed quarterly, is less than or equal to the MRDL.

2. For chlorine dioxide, a public water system shall be in compliance with the MRDL if daily samples are taken at the entrance to the distribution system and no two (2) consecutive daily samples exceed the MRDL.

(c) The MRDL shall be enforceable in the same manner as are maximum contaminant levels.

Section 4. Best Available Technology. (1) Disinfection byproducts. The following shall be the best technology, treatment techniques, or other means available for achieving compliance with the MCLs for disinfection byproducts in Section 3 of this administrative regulation:
(a) TTHM: Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant; 
(b) HAAS: Enhanced coagulation or enhanced softening or 
GAC10, with chlorine as the primary and residual disinfectant; 
(c) Bromate: Control of ozone treatment process to reduce 
production of bromate; and 
(d) Chlorite: Control of treatment processes to reduce disinfectant 
demand and control of disinfection treatment processes to reduce 
disinfectant levels.

Disinfectant residuals. The best technology, treatment tech-
niques, or other means available for achieving compliance with the 
MRDL in Section 3 of this administrative regulation shall be:
(a) Control of treatment processes to reduce disinfectant demand; and
(b) Control of disinfection treatment processes to reduce disinfectant levels.

Section 5. Analytical Requirements. (1) Except as provided in this 
section, a system shall sample and analyze according to the proce-
dures in 40 CFR 141.131, adopted without change in Section 10 of 
this administrative regulation.
(2) A system shall have the samples analyzed by a laboratory that 
has been certified by the U.S. Environmental Protection Agency or the 
cabinet according to 401 KAR 8:040.
(3) A party approved by the U.S. Environmental Protection 
Agency or the cabinet shall measure daily chloride samples at the 
entrance to the distribution system.
(4) A public water system may measure residual disinfectant con-
centrations for chlorine, chloramines, and chlorine dioxide by using a 
DPD colorimetric test kit.
(5) Residual disinfectant concentrations, alkalinity, and TOC shall 
be measured by an operator certified pursuant to 401 KAR 8:030, or a 
person under the direct supervision of a certified operator.

Section 6. Monitoring Requirements. (1) General requirements.
(a) A system shall take all samples during normal operating condi-
tions.
(b) A system may consider multiple wells drawing water from a 
single aquifer as one (1) treatment plant for determining the minimum 
number of TTHM and HAAS samples required, as approved by the 
cabinet.
(c) Failure to monitor in accordance with the monitoring plan re-
quired in subsection (9) of this section shall be a monitoring violation.
(d) Failure to monitor shall be treated as a violation for the entire 
period covered by the annual average, if compliance is based on a 
running annual average of monthly or quarterly samples or averages 
and the system’s failure to monitor makes it impossible to determine 
compliance with an MCL or MRDL.
(e) To qualify for reduced monitoring, a system shall use only data 
collected under the provisions of this administrative regulation or 40 
CFR 141.140 to 141.144.
(2) Monitoring requirements for disinfection byproducts.
(a) TTHMs and HAAS.
1. Routine monitoring. A system shall monitor at the frequency 
and locations indicated in the following table:

<table>
<thead>
<tr>
<th>System Type</th>
<th>Minimum monitoring frequency</th>
<th>Sample location in the distribution system</th>
</tr>
</thead>
</table>
| A system that uses as its source surface water or groundwater under the direct influence of surface water and that serves at least 10,000 persons | Four (4) water samples per quarter per treatment plant. | At least twenty-five (25) percent of all samples collected each quarter at locations representing maximum residence time. Remaining samples shall be taken at locations representa-
tive of at least average residence time in the distribu-
tion system and representing the entire distribution system, 
taking into account the number of persons served, different 
ources of water, and different treatment methods. |
| A system that uses as its source surface water or groundwater under the direct influence of surface water and that serves from 500 to 9,999 persons | One (1) water sample per quarter per treatment plant. | Locations representing maximum residence time. |
| A system that uses as its source surface water or groundwater under the direct influence of surface water and that serves fewer than 500 persons | One (1) sample per year per treatment plant during month of warmest water temperature. | Locations representing maximum residence time. If the sample, or average of annual samples if more than one (1) sample is taken, exceeds the MCL, system shall increase monitoring to one (1) sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in subparagraph 4 of this paragraph. |
| System using only groundwater not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons | One (1) water sample per quarter per treatment plant. | Location representing maximum residence time. |
| System using only groundwater not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons | One (1) sample per year per treatment plant during month of warmest water temperature. | Locations representing maximum residence time. If the sample, or average of annual samples, if more than one (1) sample is taken, exceeds the MCL, system shall increase monitoring to one (1) sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets criteria in subparagraph 4 of this paragraph for reduced monitoring. |

1If a system elects to sample more frequently than the minimum required, at least twenty-five (25) percent of all samples collected each quarter, including those taken in excess of the required frequency, shall be taken at locations that represent the maximum residence time in the distribution system.

2Multiple wells drawing water from a single aquifer may be considered one (1) treatment plant for determining the minimum number of samples required.

2. A system may reduce monitoring, except as otherwise provided, in accordance with the following table:

<table>
<thead>
<tr>
<th>Reduced Monitoring Frequency for TTHM and HAAS</th>
<th>TTHM annual average ≤0.040 mg/L and HAAS annual average</th>
</tr>
</thead>
</table>
| System that uses as its source surface water or groundwater under the direct | One (1) sample per treatment plant per quarter at distribu-
tion system location reflecting maximum residence time. |

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| Influence of surface water that serves at least 10,000 persons that has a source water annual average TOC level, before treatment, of ≤0.030 mg/L | ≤0.030 mg/L |
| System that uses as its source surface water or groundwater under the direct influence of surface water that serves from 500 to 9,999 persons that has a source water annual average TOC level, before treatment, of ≤0.040 mg/L | TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L | One (1) sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature. A system that uses as its source surface water or groundwater under the direct influence of surface water that serves fewer than 500 persons shall not reduce its monitoring to less than one (1) sample per treatment plant per year. |
| System using only groundwater not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons | TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L | One (1) sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature. |
| System using only groundwater not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons | TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L for two (2) consecutive years, or TTHM annual average ≤0.020 mg/L and HAA5 annual average ≤0.015 mg/L for one (1) year | One (1) sample per treatment plant per three (3) year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three (3) year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring. |

3. A system on a reduced monitoring schedule may remain on that reduced schedule if the average of all samples taken in the year for systems that shall monitor quarterly, or the result of the sample, for systems that shall monitor no more frequently than annually, is not more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. A system that does not meet these levels shall resume monitoring at the frequency identified in the sample location column in subparagraph 1 of this paragraph in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for TTHM and 0.045 mg/L for HAA5. For a system that uses only groundwater not under the direct influence of surface water and that serves fewer than 10,000 persons, if either the TTHM annual average is >0.080 mg/L or the HAA5 annual average is >0.080 mg/L, the system shall go to increased monitoring identified in the sample location column in subparagraph 1 of this paragraph in the quarter immediately following the quarter in which the system exceeds 0.080 mg/L for TTHMs or 0.080 mg/L for HAA5s.

4. A system on increased monitoring may return to routine monitoring if the TTHM annual average is ≤0.040 mg/L and HAA5 annual average is ≤0.030 mg/L.

5. The cabinet may return a system to routine monitoring.

(b) Chlorite. A community and nontransient noncommunity water system using chlorine dioxide for disinfection or oxidation shall conduct monitoring for chlorite.

1. Routine monitoring.

a. Daily monitoring. A system shall take daily samples at the entrance to the distribution system. For a daily sample that exceeds the chlorite MCL, the system shall take additional samples in the distribution system the following day at the locations required by subparagraph 2 of this paragraph, in addition to the sample required at the entrance to the distribution system.

b. Monthly monitoring. A system shall take a three (3) sample set each month in the distribution system. Additional routine sampling shall be conducted in the same manner as three (3) sample sets, at the specified locations. The system may use the results of additional monitoring conducted under subparagraph 2 of this paragraph to meet the requirement for monitoring in this clause. The system shall take one (1) sample at each of the following locations:

(i) Near the first customer;
(ii) At a location representative of average residence time; and
(iii) At a location reflecting maximum residence time in the distribution system.

2. Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system shall take three (3) chlorite distribution samples at the following locations:

a. As close to the first customer as possible;

b. In a location representative of average residence time; and

c. As close to the end of the distribution system as possible, to reflect maximum residence time in the distribution system.

3. Reduced monitoring.

a. Chlorite monitoring at the entrance to the distribution system required by subparagraph 1a of this paragraph shall not be reduced.

b. Chlorite monitoring in the distribution system required by subparagraph 1b of this paragraph may be reduced to one (1) three (3) sample set per quarter after one (1) year of monitoring if no individual chlorite sample taken in the distribution system under subparagraph 1b of this paragraph has exceeded the chlorite MCL and the system has not been required to conduct monitoring under subparagraph 2 of this paragraph. The system may remain on the reduced monitoring schedule until either any of the three (3) individual chlorite samples taken quarterly in the distribution system under subparagraph 1b of this paragraph exceed the chlorite MCL or the system is required to conduct monitoring under subparagraph 2 of this paragraph. The system shall then revert to routine monitoring.

(c) Bromate.

1. Routine monitoring. A community and nontransient noncommunity water system using ozone for disinfection or oxidation shall take one (1) sample per month for each treatment plant in the system that uses ozone. A system shall take the sample monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

2. Reduced monitoring. A system required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L, based upon representative monthly bromide measurements for one (1) year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L, based upon representative monthly measurements. If the running annual average source water bromide concentration is greater than or equal to 0.05 mg/L, the system shall resume routine monitoring required by subparagraph 1 of this paragraph.

3. Monitoring requirements for disinfectant residuals.

(a) Chlorine and chloramines.

1. Routine monitoring. A community and nontransient noncommunity water system that uses chlorine or chloramines shall measure the residual disinfectant level in the distribution system at the same time as total coliforms are sampled, as specified in 401 KAR 8:200.

2. Reduced monitoring. Monitoring shall not be reduced.

(b) Chlorine dioxide.

1. Routine monitoring. A community, nontransient noncommunity, and transient noncommunity water system that uses chlorine dioxide for disinfection or oxidation shall take daily samples at the entrance to the distribution system. For a daily sample that exceeds the MDL, the system shall take samples in the distribution system the following day at the locations required by subparagraph 2 of this paragraph, in addition to the sample required at the entrance to the distribution system.

2. Additional monitoring. Each day following a routine sample
monitoring result that exceeds the MRDL, the system shall take three (3) chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system, i.e., there is no booster chlorination, the system shall take three (3) samples as close to the first customer as possible, at an interval of at least six (6) hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one (1) or more disinfection addition points after the entrance to the distribution system, i.e., there is booster chlorination, the system shall take one (1) sample at each of the following locations:

a. As close to the first customer as possible;
b. In a location representative of average residence time; and
c. As close to the end of the distribution system as possible, reflecting maximum residence time in the distribution system.

3. Reduced monitoring. Chlorine dioxide monitoring shall not be reduced.


a. Routine monitoring. A system that uses as its source surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment shall monitor each treatment plant for total organic carbons, or TOC, no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. A system required to monitor under this paragraph shall also monitor for TOC in the source water before any treatment at the same time as monitoring for TOC in the treated water. These samples of the source water and treated water shall be considered parallel samples. When the source water sample is taken, a system shall monitor for alkalinity in the source water before any treatment. A system shall take one (1) paired sample and one (1) source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

b. Reduced monitoring. A system that uses as its source surface water or groundwater under the direct influence of surface water with an average treated water total organic carbon (TOC) of less than two and zero-tenths (2.0) mg/L for two (2) consecutive years, or less than one and zero-tenths (1.0) mg/L for one (1) year, may reduce monitoring for both TOC and alkalinity to one (1) paired sample and one (1) source water alkalinity sample per plant per quarter. The system shall revert to routine monitoring in the month following the quarter if the annual average treated water TOC is greater than or equal to two and zero-tenths (2.0) mg/L.

5. Bromate. A system required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L, based upon representative monthly measurements for one (1) year. The system shall continue bromide monitoring to remain on reduced bromate monitoring.

6. Monitoring plan. A system required to monitor under this administrative regulation shall develop and implement a monitoring plan. The system shall maintain the plan and make it available for inspection by the cabinet and the general public no later than thirty (30) days following the applicable compliance dates in Section 2 of this administrative regulation. A system that uses as its source surface water or groundwater under the direct influence of surface water serving more than 3,300 people shall submit a copy of the monitoring plan to the cabinet no later than the date of the first report required by Section 8 of this administrative regulation. The cabinet may also require another system to submit the plan. After review, the cabinet may require changes in a plan element. The monitoring plan shall include at least the following elements:

(a) Specific location and schedule for collecting samples for a parameter included in this administrative regulation;
(b) How the system will calculate compliance with MCLs, MRDLs, and treatment techniques;
(c) If providing water to a consecutive system, the sampling plan for THMs and HAAs shall reflect the entire distribution system.

Section 7. Compliance Requirements. (1) General requirements.

(a). If compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAAs, or bromate, this failure to monitor shall be treated as a monitoring violation for the entire period covered by the annual average.

2. If compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor shall be treated as a monitoring violation for the entire period covered by the annual average.

(b) A sample taken and analyzed under the provisions of this administrative regulation shall be included in determining compliance, even if the number of samples taken is greater than the minimum required.

(c) If during the first year of monitoring under Section 6 of this administrative regulation, an individual quarter's average causes or will cause the running annual average of that system to exceed the MCL, the system shall be out of compliance at the end of that quarter.

2. Disinfection byproducts.

(a) THMs and HAAs.

1. For a system that monitors quarterly, compliance with MCLs in Section 3 of this administrative regulation shall be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of the samples collected by the system as prescribed by Section 6(2)(a) of this administrative regulation:

2. For a system monitoring less than quarterly, a system shall demonstrate MCL compliance if the average of samples taken that year under the provisions of Section 6(2)(a) of this administrative regulation does not exceed the MCLs in Section 3 of this administrative regulation. If the average of the samples exceeds the MCL, the system shall increase monitoring to once per quarter per treatment plant, and the system is not in violation of the MCL until it has completed one (1) year of quarterly monitoring, unless the result of fewer than four (4) quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. A system required to increase monitoring frequency to quarterly monitoring shall calculate compliance by including the sample that triggered the increased monitoring, plus the following three (3) quarters of monitoring.

3. The running annual arithmetic average of quarterly averages covering a consecutive four (4) quarter period exceeds the MCL, the system shall be in violation of the MCL and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

4. If a public water system fails to complete four (4) consecutive quarters of monitoring, compliance with the MCL for the last four (4) quarter compliance period shall be based on an average of the available data.

(b) Bromate. Compliance shall be based on a running annual arithmetic average, computed quarterly, of monthly samples, or for months in which the system takes more than one (1) sample, the average of the samples taken during the month, collected by the system as prescribed by Section 6(2)(c) of this administrative regulation. If the average of samples covering a consecutive four (4) quarter period exceeds the MCL, the system shall be in violation of the MCL and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation. If a public water system fails to complete twelve (12) consecutive months' monitoring, compliance with the MCL for the last four (4) quarter compliance period shall be based on an average of the available data.

(c) Chlorite. Compliance shall be based on an arithmetic average of each three (3) sample set taken in the distribution system as prescribed by Section 6(2)(b)1b and 2 of this administrative regulation. If the arithmetic average of a three (3) sample set exceeds the MCL, the system shall be in violation of the MCL and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

3. Disinfectant residuals.

(a) Chlorine and chloramines.

1. Compliance shall be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system under Section 6(3)(a) of this administrative regulation. If the arithmetic covering a consecutive four (4) quarter period exceeds the MRDL, the system shall be in violation of the MRDL and shall notify the public pursuant to 401 KAR 8:070, in addition to
reporting to the cabinet pursuant to Section 8 of this administrative regulation.

2. If a system switched between the use of chlorine and chloramines for residual disinfection during the year, compliance shall be determined by including all monitoring results of both chlorine and chloramines in calculating compliance. A report submitted pursuant to Section 8 of this administrative regulation shall clearly indicate which residual disinfectant was analyzed for each sample.

(b) Chlorine dioxide.

1. Acute violations. Compliance shall be based on consecutive daily samples collected by the system under Section 6(3)(b) of this administrative regulation. If a daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (1) or more of the three (3) samples taken in the distribution system exceeds the MRL, the system shall be in violation of the MRDL. The system shall take immediate corrective action to lower the level of chlorine dioxide below the MRDL and shall notify the public pursuant to the procedures for acute health risks in 401 KAR 8:070, Section 1(1)(c), in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation. Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system shall also be considered an MRDL violation. The system shall notify the public of the violations in accordance with the provisions for acute violations under 401 KAR 8:070, Section 1(1)(c), in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

2. Nonacute violations. Compliance shall be based on consecutive daily samples collected by the system under Section 6(3)(b) of this administrative regulation. If two (2) consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the system shall be in violation of the MRDL and the system shall take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and shall notify the public pursuant to the procedures for nonacute health risks in 401 KAR 8:070, Section 6, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation. Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system also shall be an MRDL violation, and the system shall notify the public of the violation in accordance with the provisions for nonacute violations in 401 KAR 8:070, Section 6, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

(4) Disinfection byproduct precursors. Compliance shall be determined as specified by Section 9(3) of this administrative regulation. A system may begin monitoring to determine if Step 1 TOC removal will be able to be met twelve (12) months before the compliance date for this system. This monitoring is not required, and failure to monitor during this period shall not be a violation. However, a system that does not monitor during this period and then determined in the first twelve (12) months that it is not able to meet the Step 1 requirements in Section 9(2)(b) of this administrative regulation and shall therefore apply for alternate minimum TOC removal or Step 2, requirements, shall not be eligible for retroactive approval of Step 2 requirements, as allowed pursuant to Section 9(2)(c) of this administrative regulation, and shall be in violation. A system may apply for Step 2 requirements after the compliance date. For a system required to meet Step 1 TOC removals, if the value calculated under Section 9(3)(a)(4) of this administrative regulation is less than 1.00, the system shall be in violation of the treatment technique requirements and shall notify the public pursuant to 401 KAR 8:070, in addition to reporting to the cabinet pursuant to Section 8 of this administrative regulation.

Section 8. Reporting and Recordkeeping Requirements. This section prescribes the reporting and record keeping requirements.

(1) A system required to sample quarterly or more frequently shall report to the cabinet within ten (10) days after the end of each quarter in which samples were collected, notwithstanding the provisions of 401 KAR 8:020. A system required to sample less frequently than quarterly shall report to the cabinet within ten (10) days after the end of each monitoring period in which samples were collected.

(2) Disinfection byproducts.

(a) A system monitoring for TTHMs and HAAs under the require-
2. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter;
3. For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal;
4. Calculations for determining compliance with the TOC percent removal requirements, as provided in Section 9(3)(a) of this administrative regulation; and
5. If the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in Section 9(2) of this administrative regulation for the last four quarters.

(b) A system monitoring monthly or quarterly for TOC under the requirements of Section 9(4) of this administrative regulation and meeting one (1) or more of the alternative compliance criteria in Section 9(1)(b) or (c) of this administrative regulation shall report:
1. The alternative compliance criterion that the system is using;
2. The number of paired samples taken during the last quarter;
3. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter;
4. The running annual arithmetic average based on monthly averages, or quarterly samples, of source water TOC for a system meeting the criterion in Section 9(1)(b)1 or 3 of this administrative regulation or of treated water TOC for a system meeting the criterion in Section 9(1)(b)2 of this administrative regulation;
5. The running annual arithmetic average based on monthly average, or quarterly samples, of source water specific ultraviolet absorbance, or SUVA, for a system meeting the criterion in Section 9(1)(b)3 of this administrative regulation or of treated water SUVA for a system meeting the criterion in Section 9(1)(b)6 of this administrative regulation;
6. The running annual average of source water alkalinity for a system meeting the criterion in Section 9(1)(b)6 of this administrative regulation and of treated water alkalinity for a system meeting the criterion in Section 9(1)(c)5 of this administrative regulation;
7. The running annual average for both THM and HAAs for a system meeting the criterion in Section 9(1)(b)6 of this administrative regulation;
8. The running annual average of the amount of magnesium hardness removal, as CACO₃, in mg/L, for a system meeting the criterion in Section 9(1)(c)2 of this administrative regulation; and
9. If the system is in compliance or not with the particular alternative compliance criteria in Section 9(1)(b) or (c) of this administrative regulation.

(a) A system that uses as its source surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment shall operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal level specified in subsection (2) of this section unless the system meets at least one (1) of the alternative compliance criteria listed in paragraph (b) or (c) of this subsection.
(b) Alternative compliance criteria for enhanced coagulation and enhanced softening system. A system that uses as its source surface water or groundwater under the direct influence of surface water using conventional filtration treatment may use the alternative compliance criteria in subparagraphs 1 to 6 of this paragraph to comply with this section, instead of complying with subsection (2) of this section. A system shall still comply with the monitoring requirements in Section 6(4) of this administrative regulation.
1. The system's source water TOC level, measured according to 40 CFR 141.131(d)(3) is less than two and zero-tenths (2.0) mg/L, calculated quarterly as a running annual average;
2. The system's treated water TOC level, measured according to 40 CFR 141.131(d)(3) is less than two and zero-tenths (2.0) mg/L, calculated quarterly as a running annual average;
3.a. The system's source water TOC level, measured according to 40 CFR 141.131(d)(3), is less than four and zero-tenths (4.0) mg/L, calculated quarterly as a running annual average;
3.b. The source water alkalinity, measured according to 40 CFR 141.131(d)(1), is greater than sixty (60) mg/L as CACO₃, calculated quarterly as a running annual average; and either
4.(i) The THM and HAAs running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or
4.(ii) Before the effective date for compliance in Section 2 of this administrative regulation, the system has made a clear and irrevocable financial commitment to operate the system no later than the effective date for compliance in Section 2 of this administrative regulation to the use of technologies that will limit the levels of THMs and HAAs to no more than 0.040 mg/L and 0.030 mg/L, respectively. The system shall submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the cabinet for approval, not later than the effective date for compliance in Section 2 of this administrative regulation. These technologies shall be installed and operating not later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule shall constitute a violation of this administrative regulation;
5. The system's source water SUVA, before any treatment and measured monthly according to 40 CFR 141.131(d)(4) is less than or equal to two and zero-tenths (2.0) L/mg-m, calculated quarterly as a running annual average;
6. The system's finished water SUVA, measured monthly according to 40 CFR 141.131(d)(4), is less than or equal to two and zero-tenths (2.0) L/mg-m, calculated quarterly as a running annual average.
(c) Additional alternative compliance criteria for a softening system. A system practicing enhanced softening that is not able to achieve the TOC removals required by subsection (2)(b) of this section may use the alternative compliance criteria in subparagraphs 1 and 2 of this paragraph instead of complying with subsection (2) of this section. The system shall still comply with monitoring requirements in Section 6(4) of this administrative regulation.
1. Softening that results in lowering the treated water alkalinity to less than sixty (60) mg/L as CACO₃, measured monthly according to 40 CFR 141.131(d)(1) and calculated quarterly as a running annual average; and
2. Softening that results in removing at least ten (10) mg/L of magnesium hardness as CACO₃, measured monthly and calculated quarterly as an annual running average.
(2) Enhanced coagulation and enhanced softening performance requirements.
(a) A system shall achieve the percent reduction of TOC specified in paragraph (b) of this subsection between the source water and the combined filter effluent, unless the cabinet approves a system's request for Step 2 requirements under paragraph (c) of this subsection.
(b) Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with 40 CFR 141.131(d). A system practicing softening shall meet the Step 1 TOC reductions in the column of the table for source water alkalinity greater than 120 mg/L, for the specified source water TOC:

<table>
<thead>
<tr>
<th>Step 1 Required Removal Percent of TOC by Enhanced Coagulation and Enhanced Softening for a System That Uses as Its Source Surface Water or Groundwater Under the Direct Influence of Surface Water Using Conventional Treatment*</th>
<th>Source water TOC, mg/L</th>
<th>Source water alkalinity, mg/L as CACO₃</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 60</td>
<td>81 - 120</td>
<td>&gt; 120*</td>
</tr>
<tr>
<td>2.0 ≤ TOC ≤ 4.0</td>
<td>35.0 %</td>
<td>25.0 %</td>
</tr>
<tr>
<td>4.0 &lt; TOC ≤ 8.0</td>
<td>45.0 %</td>
<td>35.0 %</td>
</tr>
<tr>
<td>TOC &gt; 8.0</td>
<td>50.0 %</td>
<td>40.0 %</td>
</tr>
</tbody>
</table>

* System meeting a condition in subsection (1)(b) of this section need not operate with enhanced coagulation.
A softening system meeting an alternative compliance criterion in subsection (3) of this section need not operate with enhanced softening.
A system practicing softening shall meet the TOC removal requirements in this column.
(c) A system that uses as its source surface water or groundwater under the direct influence of surface water and that uses conventional...
treatment that is not able to achieve the Step 1 TOC removals required by paragraph (b) of this subsection due to water quality parameters or operational constraints shall apply to the cabinet, with three (3) months of failure to achieve the TOC removals required by paragraph (b) of this subsection, for approval of Step 2 removal requirements submitted by the system. If the cabinet approves the Step 2 requirements the cabinet may make those requirements retroactive for the purposes of determining compliance. Until the cabinet approves the Step 2 requirements, the system shall meet the Step 1 TOC removals contained in paragraph (b) of this subsection.

(c) Step 2 requirements. An application to the cabinet by an enhanced coagulation system for approval of Step 2 requirements under paragraph (c) of this subsection shall include, as a minimum, the results of bench- or pilot-scale testing conducted under subparagraph 1 of this paragraph. The submitted bench- or pilot-scale testing shall be used to determine the alternate enhanced coagulation level.

1. Alternate enhanced coagulation level shall be the coagulation at a coagulant dose and pH as determined by the method described in this subparagraph and subparagraphs 2 through 5 of this paragraph such that an incremental addition of ten (10) mg/L of alum, or equivalent amount of ferric salt, results in a TOC removal of less than or equal to three-tenths (0.3) mg/L. The percent removal of TOC at this point of the "TOC removal versus coagulant dose" curve then shall be the minimum TOC removal required for the system. Upon approval by the cabinet, this minimum requirement shall supersede the minimum TOC removal required by the table in paragraph (b) of this subsection. The requirement shall be effective until the cabinet approves a new value based on the results of a new bench- and pilot-scale test. Failure to achieve the alternative minimum TOC removal levels set by the cabinet shall be a violation of this administrative regulation.

2. Bench- or pilot-scale testing of enhanced coagulation shall be conducted by using representative water samples and adding ten (10) mg/L increments of alum, or equivalent amounts of ferric salt, until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table:

<table>
<thead>
<tr>
<th>Enhanced Coagulation Step 2 Target pH</th>
<th>Alkalinity, mg/L measured as CaCO₃</th>
<th>Target pH</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 60</td>
<td>5.5</td>
<td></td>
</tr>
<tr>
<td>61 - 120</td>
<td>6.3</td>
<td></td>
</tr>
<tr>
<td>121 - 240</td>
<td>7.0</td>
<td></td>
</tr>
<tr>
<td>&gt; 240</td>
<td>7.5</td>
<td></td>
</tr>
</tbody>
</table>

3. For waters with alkalinity of less than sixty (60) mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below five and five-tenths (5.5) before significant TOC removal occurs, the system shall add necessary chemicals to maintain the pH between five and three-tenths (5.3) and five and seven-tenths (5.7) in samples until the TOC removal of three-tenths (0.3) mg/L per ten (10) mg/L alum added, or equivalent addition of iron coagulant, is reached.

4. The system may operate at a coagulant dose or pH necessary, consistent with other administrative regulations in 401 KAR 8:010 to 8:700, to achieve the minimum TOC percent removal approved under paragraph (c) of this subsection.

5. If the TOC removal is consistently less than three-tenths (0.3) mg/L of TOC per ten (10) mg/L of incremental alum dose, at all doses of alum, or equivalent addition of iron coagulant, the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the cabinet for a waiver of enhanced coagulation requirements.

(b) Compliance calculations.

(a) A system that uses as its source surface water or groundwater under the direct influence of surface water other than that identified in subsection (1)(b) or (c) of this section, shall comply with requirements in subsection (2)(b) or (c) of this section. A system shall calculate compliance quarterly, beginning after the system has collected twelve (12) months of data, by determining an annual average using the following method:

1. Determine actual monthly TOC percent removal, which shall be calculated as:

   \[1 - (\text{treated water TOC/source water TOC}) \times 100\]

2. Determine the required monthly TOC percent removal from either the table in subsection (2)(b) of this section or from subsection (2)(c) of this section;

3. Divide the value in subparagraph 1 of this paragraph by the value in subparagraph 2 of this paragraph;

4. Add together the results of subparagraph 3 of this paragraph for the past twelve (12) months and divide by twelve (12); and

5. If the value calculated in subparagraph 4 of this paragraph is less than 1.00, the system is not in compliance with the TOC percent removal requirements.

(b) A system may use the provisions in subparagraph 1 to 5 of this paragraph instead of the calculations in paragraph (a) through 5 of this subsection to determine compliance with TOC percent removal requirements:

1. In a month that the system's treated or source water TOC levels, measured according to 40 CFR 141.131(d)(3), is less than two and zero-tenths (2.0) mg/L, the system may assign a monthly value of one and zero-tenths (1.0), instead of the value calculated in paragraph (a)3 of this subsection, when calculating compliance under the provisions of paragraph (a) of this subsection;

2. In a month that a system practicing softening removes at least ten (10) mg/L of magnesium hardness, as CaCO₃, the system may assign a monthly value of one and zero-tenths (1.0), instead of the value calculated in paragraph (a)3 of this subsection, when calculating compliance under the provisions of paragraph (a) of this subsection;

3. In a month that the system's source water SUVA, before treatment and measured according to 40 CFR 141.131(d)(4), is less than or equal to two and zero-tenths (2.0) L/mg-m, the system may assign a monthly value of one and zero-tenths (1.0) instead of the value calculated in paragraph (a)3 of this subsection when calculating compliance under the provisions of paragraph (a) of this subsection;

4. In a month that the system's finished water SUVA, measured according to 40 CFR 141.131(d)(4), is less than or equal to two and zero-tenths (2.0) L/mg-m, the system may assign a monthly value of one and zero-tenths (1.0) instead of the value calculated in paragraph (a)3 of this subsection when calculating compliance under the provisions of paragraph (a) of this subsection;

(c) A system that uses as its source surface water or groundwater under the direct influence of surface water and that uses conventional treatment may also comply with the requirements of this section by meeting the criteria in subsection (1)(b) or (c) of this section.

(d) Treatment technique requirements for DBP precursors. For a system that uses surface water or groundwater as its source and that uses conventional treatment, enhanced coagulation or enhanced softening shall be a treatment technique to control the level of disinfection byproduct precursors in a drinking water treatment or drinking water distribution system.


(2) The subject matter of this administrative regulation relating to the analytical methods and other analytical requirements is governed by that federal regulation.

JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 8 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation is scheduled for 1:30 p.m. Eastern Time, December 21, 2000, at the Auditorium, Ground Floor, Capital Plaza Tower, Wilkinson Blvd., Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing, by December 14, 2000, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be
heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing or the scheduled hearing date, if the hearing is cancelled. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, 14 Riverfront Road, Frankfort, Kentucky 40601, Telephone: (502) 564-3410, Fax No: (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jack A. Wilson, Director

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates into Kentucky's administrative regulations the new federal requirements in 40 CFR 141.130 - 141.135 for public water systems that provide drinking water and that treat their water with a chemical disinfectant for either primary or residual treatment. It establishes maximum residual disinfectant levels (MRDLs) and MRDL goals (MRDGLs), maximum contaminant levels (MCLs) and MCL goals (MCLGs), and treatment techniques for compounds of disinfec-
tants, disinfection byproducts, and disinfection precursors. The compounds and disinfectants (chlorine, chloramines, and chlorite) and inorganic disinfection byproducts (total trihalomethanes, or TTHMs: the sum of chloroform, bromodichloromethane, dibromochloromethane, and bromo-
clorom; and haloacetic acids, or HAAs; the sum of dichloro-
acetic, trihaloacetic, monochloro-acetic, monobromochloro-
acetic, and dibromochloroacetic acids); and two inorganic disinfection by-products, chlor-
ite and bromate. The federal regulation is also called the Stage 1 Disinfection Byproducts Rule (DBPR). The federal regulation includes monitoring, record-keeping, and public notification requirements for these compounds. Also, the federal regulation contains percent removal requirements for total organic carbon (TOC), which is a precursor to disinfection byproducts. Finally, certain requirements for chlorine di-
oxide apply to transient noncommunity water systems. 401 KAR 8:150 and 8:160 require public water systems to protect against microbial contamination with a disinfectant. While these disinfectants are effec-
tive in controlling many microorganisms, they react with natural or-
ganic and inorganic matter in the water to form disinfection byproducts (DBPs), some of which may pose health risks. This administrative regulation puts limits on the levels of disinfection byproducts that are formed and levels on the precursors of those disinfection byproducts, thus ensuring that Kentucky's drinking water is microbiologically safe at the limits set for disinfectants and DBPs and that these chemicals do not pose an unacceptable health risk at these limits. The U.S. Envi-
ronmental Protection Agency (EPA) predicts that this rule will provide public health protection for public water systems that were not previ-
ously subject to regulations on disinfection byproducts (generally sys-
tems serving populations of less than 10,000). The rule will also, for the first time, provide public health protection from exposure to halo-
acetic acids, chlorine (a major chlorine dioxide byproduct), and bro-
mate (a major ozone byproduct). This administrative regulation re-
quires, updates, and supercedes 401 KAR 8:500 for total trihalom-
ethanes. After January 1, 2004, that administrative regulation will not apply to any sources, and will be repealed. 401 KAR 8:500 on disinfection byproducts currently applies to community water systems that serve a population of 10,000 or more and that add a disinfectant to the water. It requires those systems to meet a total trihalomethane (TTHM) MCL of .100 mg/L. Since the federal regulation was promu-
gated in 1979, and Kentucky's administrative regulation after that, most larger community water systems that use surface water or groundwater under the direct influence of surface water as their source have had been able to come into compliance with the .100 mg/L limit. The new federal regulation tightens (reduces) the TTHM MCL to .080 mg/L, adds new MCLs for five haloacetic acids (HAAs) and other disinfectants, and requires a percent removal of total or-
ganic carbon (TOC), which is a disinfection precursor. The federal regulation and this administrative regulation also extend the applicabil-
ity to all systems that disinfect, although it gives the smaller systems more time to come into compliance. It also requires transient non-
community systems that use chlorine dioxide as a disinfectant or ox-
idant to meet new requirements for those compounds. The U.S. EPA has determined that the required techniques in the final regulation are feasible since there have been significant changes in technology and treatment techniques since the original TTHM regulation was promu-
gated in the 1979.
(b) The necessity of this administrative regulation: KRS 224.10-
110 directs the Natural Resources and Environment-
mental Protection Cabinet to develop a program for the regula-
tion and control of the purification of water for public and semipublic use. The Safe Drinking Water Act, as amended in 1986 and 1996, provides for the primary enforce-
ment responsibility for states that have adopted regulations "no less stringent than the national primary drinking water regu-
lations," as well as meeting other criteria stipulated by the Act. The Common-
wealth of Kentucky has adopted and is currently exercising this pri-
mary enforcement responsibility by promulgating the administrative 
regulations in this chapter. In December 1998, the national primary 
drinking water regulations were amended to add a new regulation, the 
Stage 1 Disinfection Byproducts Rule, also called the rule for Disin-
fectants, Disinfection Byproducts, and Disinfection Precursors. 
To maintain Kentucky's "primacy" the Cabinet is required to promul-
gate this administrative regulation that contains the requirements of the 
new federal regulation.
(c) How this administrative regulation conforms to the content of 
the authorizing statutes: This administrative regulation promulgates 
Kentucky's administrative regulations the provisions of the federal 
regulation, thus maintaining Kentucky's program for the purification 
of water for public and semipublic use.
(d) How this administrative regulation currently assists or will 
assist in the effective administration of the statutes: This administrative 
regulation provides additional disinfection requirements for public 
water systems, thus maintaining its program for the purification of 
water for public use.
If this is an amendment to an existing administrative regulation, 
provide a brief summary of:
(a) How the amendment will change this administrative regulation: 
Not applicable since this is a new administrative regulation.
(b) The necessity of the amendment to this administrative regu-
lation: Not applicable since this is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing 
statutes: Not applicable since this is a new administrative regulation.
(d) How the amendment will assist in the effective administration 
of the statutes: Not applicable since this is a new administrative regu-
lation.
(3) List the type and number of individuals, businesses, organiza-
tions, or state and local governments affected by this administrative 
regulation: This administrative regulation will eventually affect all public 
water systems in Kentucky, of which there are approximately 550. The 
applicability is "phased in" to apply first to community water systems 
that serve a population of 10,000 or more and those systems on source 
surface water or groundwater under the direct influence of surface 
water. Those systems shall be in compliance by January 1, 2002. 
There are about 100 of those systems in Kentucky, most of which are 
controlled or owned by local governments. Those public water sys-
tems provide drinking water to citizens of the Commonwealth. 
The remaining systems shall comply with this administrative regulation by 
January 1, 2004. There are about 550 of those remaining systems, 
some of which are controlled or owned by local governments. Those 
smaller systems also provide drinking water to citizens of the 
Commonwealth.
(4) Provide an assessment of how the above group or groups will 
be impacted by either the implementation of this administrative regu-
lation, if new, or, by the change if it is an amendment: Due to the new 
MCL for TTHMs, which is 20% lower than the current MCL, the addi-
tion of two new MCLs for other disinfectants and disinfection byproducts, 
percent removal requirements for disinfection precursors, and the addi-
tion of new treatment technologies, water treatment plants will be required 
to monitor for additional parameters, optimize existing treatment, 
and, or change treatment practices. These will result in greater ex-
penses (testing, chemicals, residuals production, new technology), 
and more stringent operator and maintenance. Public water systems 
are required to meet the new MCLs and MRDGLs for the various com-
pounds. They are also required to remove specified percentages of 
- 1688 -
organic materials, measured as total organic carbon (TOC), that may react with disinfectants to form disinfection byproducts (DBPs). There are additional monitoring and sampling requirements to determine compliance. TOC removal will be achieved through a treatment technique (enhanced coagulation or enhanced softening), unless a system meets alternative criteria. These are requirements that are imposed by the promulgation of the federal regulation and apply to all affected systems, regardless of Kentucky’s action of promulgating this administrative regulation. The larger systems (population served of 10,000 or more) that have been subject to the previous administrative regulation for disinfection byproducts, 401 KAR 8:500, will generally be able to meet the new standards. They have been measuring for TTTHMs and have been meeting the previous standard. They have also been making changes in their processes in anticipation of the final rule since the federal regulation was proposed in 1994. The larger impact will be on those systems that serve a population of less than 10,000. They have not been subject to the current TTHM standard, and thus have not been measuring for TTTHMs, disinfection precursors, or other disinfection byproducts. The federal regulation and this administrative regulation will impact those systems the most. Nationally, EPA predicts that a higher percentage of small systems (70%) will be affected than will large systems (61%) because smaller systems previously did not have to comply with a TTHM standard. In Kentucky, about 550 systems have a population served of less than 10,000, although some of those systems do have TTHM data because they purchase water from another system, and together they serve more than 10,000 persons. These 550 systems will be impacted the most by this administrative regulation, although they have until 2004 to come into compliance. On a national basis, EPA predicted that 39% of the systems would need no further treatment to meet the new standards; 16.6% would use chlorine or chloramines to comply; 38% would use enhanced coagulation and either chloramines or chlorine; and 6.5% would use ozone, chlorine dioxide, granular activated carbon, or membrane filtration. The estimate that 39% of the systems would not need any additional controls is attributed to the less stringent disinfection requirements under the Interim Enhanced Surface Water Treatment Rule, in 40 CFR 141.170 to 141.175 and the proposed 401 KAR 8:160, included in this package of proposed administrative regulations. That rule reduces the formation of DBPs and reduces the number of systems needing treatment to meet the Stage 1 DBPR. Also, a substantial number of large and small systems may have already made treatment changes to comply with the proposed rule for the federal regulation, when it was released in 1994. Members of the Cabinet’s drinking water technical assistance program have been working with affected public water systems since the federal regulation was promulgated. As a result, most of the larger affected systems are already meeting the new requirements. The team is currently working with the mid-sized systems (populations of 10,000 - 3,300), and is expected to work with the remaining systems well before the effective date for the smaller systems, January 2004. TOC removal is generally accomplished by the Step 1 TOC removal process. Again, most large systems are able to meet their required removal percentage, although it does require additional testing, supplies, and staff that are adequately trained and experienced. If a system is not able to meet the required Step 1 removal percentage, it can use the Step 2 alternative procedure. To date, the Cabinet has found that most systems that could not meet the Step 1 removal percentage should be able to meet the alternative Step 2 performance criteria. The alternative Step 2 requirements require adequately trained staff, additional monitoring, and additional supplies beyond the Step 1 removal requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no cost estimates specific to Kentucky’s public water systems. Nationally, EPA estimates capital costs of $4.97 billion (in 1998 dollars) and total annual cost of $1.3 billion. These costs are imposed whether or not Kentucky promulgates this administrative regulation. As stated above, most larger systems have been able to come into compliance by optimizing their performance. Additional costs come in the form of increased monitoring and testing, technology changes if necessary, and more trained and experienced operators. Phase I of the regulation requires generally that systems that serve a population of 10,000 or more be in compliance by January 1, 2002. Phase II generally applies to systems that serve a population of less than 10,000; these systems shall be in compliance by January 1, 2004. For the "Phase I" systems, treatment practices would be optimized for disinfection byproduct precursor removal and disinfection application. Additional monitoring must also be conducted at an approximate cost of $5,000 to $9,000 annually, depending upon the disinfectants used. Treatment optimization for precursor removal can double a coagulant budget and significantly affect filter wastewater usage, residuals production, operation and maintenance procedures, and turbidity (pathogen) removal. For the "Phase II" systems, monitoring costs will range from $5,500 to $10,000 annually. The increased costs include TTHM monitoring that the large systems are currently required to perform. The following table, which contains parts of the table from the final rule on the federal regulation, 40 CFR 141.130 to 141.135 (December 16, 1998 Federal Register, 63 FR 69437), gives a general idea of the costs imposed by this federal regulation, which will also be incurred by Kentucky’s public water systems. The table includes operation and maintenance costs and amortized capital costs, using 7% discount rate and a 20-year amortization period.

### Surface Water System Costs for DBP Control Technologies at 7% Cost of Capital ($/1000 Gallons Treated)

<table>
<thead>
<tr>
<th>Treatment Technique</th>
<th>System Size (Population Served)</th>
<th>100-500</th>
<th>500-1K</th>
<th>3.3K-10K</th>
<th>10-25K</th>
<th>25-50K</th>
<th>50-100K</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chlorine/Chloramine</td>
<td>100-500</td>
<td>0.71</td>
<td>0.19</td>
<td>0.06</td>
<td>0.03</td>
<td>0.01</td>
<td>0.01</td>
</tr>
<tr>
<td>Enhanced Coagulation (EC)</td>
<td>500-1K</td>
<td>0.16</td>
<td>0.12</td>
<td>0.09</td>
<td>0.08</td>
<td>0.07</td>
<td>0.07</td>
</tr>
<tr>
<td>EC + Chloramines</td>
<td>3.3K-10K</td>
<td>0.18</td>
<td>0.12</td>
<td>0.09</td>
<td>0.08</td>
<td>0.07</td>
<td>0.07</td>
</tr>
<tr>
<td>Ozone + Chloramines</td>
<td>10-25K</td>
<td>1.00</td>
<td>0.36</td>
<td>0.23</td>
<td>0.13</td>
<td>0.09</td>
<td>0.09</td>
</tr>
<tr>
<td>Chlorine dioxide</td>
<td>25-50K</td>
<td>1.66</td>
<td>0.24</td>
<td>0.11</td>
<td>0.07</td>
<td>0.05</td>
<td>0.05</td>
</tr>
<tr>
<td>Membranes</td>
<td>50-100K</td>
<td>3.40</td>
<td>3.40</td>
<td>3.40</td>
<td>3.40</td>
<td>3.40</td>
<td>3.40</td>
</tr>
</tbody>
</table>

This table shows approximate costs for 506 of Kentucky’s public water systems, out of the 651 systems in Kentucky. Systems whose sizes are not listed in the table have costs between those listed for the specific treatment technique (see also the complete table) in the December 16, 1998 Federal Register. Smaller systems that must be in compliance by 2004 probably will have to modify their treatment process and undertake DBP monitoring and reporting. Systems needing to modify treatment may switch to other disinfectants for residual disinfection, move the point of disinfectant application, and improve precursor removal. These are relatively low-cost alternatives. Higher cost alternatives, such as using ozone for primary disinfection or using GAC or granular activated carbon for secondary treatment, may also provide other treatment benefits, especially in light of future regulations. Some of these systems may choose nontreatment alternatives, such as consolidation with another system or changing to a higher quality water source, if available. Smaller systems are also more likely to need to increase plant staffing and training to understand process control strategy. Small systems will be required to do this since larger systems have already taken these steps to meet the current TTHM regulation. 401 KAR 8:500. Finally, meeting the requirements of the Stage I DBPR will require operating at a higher level of sophistication and in a better state of repair than some plants serving less than 10,000 people have considered acceptable or necessary in the past. Therefore, those systems will more likely have to make structural improvements and enhance laboratory and staff capacity. Those systems will also more likely need to enhance their physical, financial, and operational capacity. If so, those systems will possibly be eligible for funding from the state drinking water revolving fund to help them achieve compliance.
a system is not eligible for those or other funds, then the system may need to merge with other systems or use a variance or exemption, if available.

(b) On a continuing basis: The initial costs will stay consistent. Public water systems could see a reduction in monitoring costs due to lower analytical costs in the future, or a reduction in monitoring frequency if the system records below specified levels. Smaller systems (those serving a population of less than 10,000) will be impacted the most due to the lack of historical monitoring data for TTHMs on which to base treatment optimization decisions and a small revenue base over which to spread the additional costs.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Monies allocated by the Kentucky General Assembly in its biennial budget will be used to implement and enforce the administrative regulations throughout 401 KAR Chapter 8, including this administrative regulation. In addition, the Cabinet receives grants from the U.S. EPA to implement the provisions of the federal Safe Drinking Water Act, as amended, if the Cabinet’s program is no less stringent than the federal program, and the Cabinet maintains “primacy” for the enforcement and implementation of the federal program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement only this administrative regulation. However, the Cabinet has received an increase in funding from the U.S. EPA to implement other new provisions of the Safe Drinking Water Act.

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

(9) TIERING: Is tiering applied? Yes. While this administrative regulation will eventually apply to most public water systems, the applicability is “phased in” for smaller systems or systems not previously subject to the previous administrative regulation on TTHMs. A community water system or nontransient noncommunity system that uses as its source surface water or groundwater under the direct influence of surface water and that serves a population of 10,000 or more persons shall comply beginning January 1, 2002. A transient noncommunity system that uses as its source surface water or groundwater under the direct influence of surface water and that serves a population of 10,000 or more persons that uses chlorine dioxide as a disinfectant or oxidant shall also comply beginning January 1, 2002. If a community water system or a nontransient noncommunity water system serves fewer than 10,000 persons or if the system uses only groundwater not under the direct influence of surface water (a “true” groundwater system), then the system shall comply beginning January 1, 2004. If a transient noncommunity water system serves fewer than 10,000 persons and uses chlorine dioxide as a disinfectant or oxidant, or if the system uses only groundwater not under the direct influence of surface water and uses chlorine dioxide as a disinfectant or oxidant, the system shall comply beginning January 1, 2004. In addition, a system that is installing granular activated charcoal (GAC) or membrane technology to comply with the maximum contaminant levels for disinfection byproducts may apply to the cabinet for an extension of up to 24 months past the required dates, under specified conditions. Finally, EPA provided additional tiering: the federal regulation and this administrative regulation require less routine monitoring for smaller systems and systems that are measuring specified disinfectants. Systems must return to full monitoring if they record above the specified levels. Smaller systems may also reduce their economic burden by consolidation with larger systems, using money from the drinking water state revolving fund loans, and using variances and exemptions when needed and applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect some public water systems, many of which are owned or controlled by local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to those affected public water systems that provide drinking water to their customers.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year, and the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues.

Expenditures (+/-): There are no cost estimates specific to Kentucky. Larger systems generally are able to comply with all the requirements by optimizing their performance. There are increased monitoring and testing requirements, necessitating more skilled and trained operators. Smaller systems will be required to test for TTHMs and the HAAs compounds, for the first time. Such tests cost about $1,500 quarterly. Proportionally, there will be more increased monitoring and testing requirements, and an even greater need for skilled operators, which cost more to train and retain. In addition to the new testing requirements, systems may have to use new technologies to meet the requirements of this administrative regulation. See also the discussion on costs in (5) in the Regulatory Impact Analysis.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Agent Licensing
(New Administrative Regulation)

806 KAR 9:260. Rental vehicle agent and managing employee

RELATES TO: 2000 Ky. Acts ch. 380
STATUTORY AUTHORITY: KRS 304.2-110, 2000 Ky. Acts ch. 380
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110
provides that the Commissioner of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation sets forth the information to be included in the application for rental vehicle agent and managing employee licenses; the requirements for prelicensing education, course examinations, continuing education for rental vehicle managing employees; and recordkeeping for rental vehicle agents and employees.

Section 1. The license application shall be submitted as a package, and shall include:

1. Form 8301-BE for the business entity rental vehicle agent applicant or Form 8301 for the individual rental vehicle agent applicant signed by the applicant and the appointing insurer;
2. Form 8301 for each managing employee applicant signed by the applicant and the appointing insurer;
3. Form 8301-RV signed by the rental vehicle agent applicant and all managing employee applicants; and
4. The fees specified in KRS 304.4-010 and the applicable regulations.

Section 2. A licensed rental vehicle agent shall submit an amended form 8301-RV or other applicable forms prescribed by the commissioner no later than thirty (30) days from the date of any change. A licensed rental vehicle agent shall not sell, solicit, or negotiate insurance at any business location that does not have a licensed managing employee assigned to that location.

Section 3. A licensed rental vehicle agent shall maintain a current list of every unlicensed employee authorized to act under the license and the name of the assigned licensed managing employee for each business location.

Section 4. (1) The licensed rental vehicle agent shall:
(a) Adopt and utilize the department's preapproved prelicensing course of study for its managing employees; or
(b) Submit to the commissioner for approval a prelicensing course of study for its managing employees.
(2) The prelicensing course of study shall include at a minimum the materials designated in a course outline provided by the department.
(3) The licensed rental vehicle agent shall be responsible for the insurance activities of its licensed managing employees and its unlicensed employees and representatives.

Section 5. (1) The licensed rental vehicle agent shall:
(a) Adopt and utilize the department's preapproved licensing examination for its managing employees; or
(b) Submit its proposed licensing examination to be given to its managing employees to the commissioner for approval.
(2) The examination for the managing employees shall include at least twenty-five (25) questions on the topics in the department's course outline. Each managing employee applicant shall attain a score of seventy (70) percent or better to pass the examination and be eligible for the license.

Section 6. (1) The licensed rental vehicle agent shall submit its proposed continuing education courses for its licensed managing employees and its unlicensed employees or representatives to the commissioner for approval.
(2) The licensed managing employee shall successfully complete at least six (6) hours of continuing education during each continuing education biennium. At least four (4) hours shall be related to property and casualty insurance and at least two (2) hours shall be related to ethics.
(3) The licensed rental vehicle agent's unlicensed employees or representatives shall receive one (1) hour continuing education relating to consumer disclosures each year.
(4) Only continuing education courses approved in accordance with subsection (1) of this section or 806 KAR 9:220 may be used to satisfy the continuing education requirements of this section. These continuing education courses shall be taught by approved providers and instructors, which may include the licensed rental vehicle agent.
(5) The managing employee license of any individual failing to comply with the continuing education requirements of this section shall be terminated and promptly surrendered to the commissioner without demand.

Section 7. (1) The rental vehicle agent licensee shall certify to the commissioner on a form prescribed by the commissioner that each licensed managing employee has successfully completed the continuing education required by Section 6 for the continuing education biennium ending June 30, 2002, and biennially thereafter.
(2) The rental vehicle agent licensee shall certify to the commissioner on a form prescribed by the commissioner that its unlicensed employees or representatives have successfully completed the continuing education required by Section 6 for the continuing education biennium ending June 30, 2002, and biennially thereafter.
(3) The rental vehicle agent licensee shall maintain complete records of the prelicensing study and course examination for the managing employees, and continuing education for the managing employees and unlicensed employees or representatives for at least three (3) years.

Section 8. Every licensed managing employee shall certify to the commissioner that he or she successfully completed the continuing education required by Section 6 on a form prescribed by the commissioner for the continuing education biennium ending June 30, 2002, and biennially thereafter.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form 8301 "Resident Individual License Application (10/2000 edition);
(b) Form 8301-BE "Resident Business Entity License Application (10/2000 edition);
(c) Form 8301-RV "Rental Vehicle License - Supplemental Application (9/2000 edition)."
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance at 215 West Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary

APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 2 p.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five workdays prior to the hearing, of their intent to attend. If no notice of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given 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. Anyone who does not wish to be heard at the public hearing, may submit written comments on the proposed administrative regulation. 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: Suette W. Dickinson, Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602-0517, (502) 564-6075.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suette W. Dickinson

(1) Provide a brief summary of:
(a) What this administrative regulation does;
(b) The administrative regulation sets forth the information to be included in applying for rental vehicle agent and managing employee licenses. It also clarifies the requirements for prelicensing training, examinations, continuing education and recordkeeping for rental vehicle agents, rental vehicle managing employees, and unlicensed employees of the rental vehicle agent completing applications for rental vehicle insurance.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the department's procedures in implementing the new licenses created through 2000 Ky. Acts ch. 380 by the General Assembly for rental vehicle agent and rental vehicle managing employee. 2000 Ky. Acts ch. 380, sec. 28 requires a licensed rental vehicle agent to get prior approval for its courses of instruction, course examinations for managing employees, training, and continuing education material for all employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The related statutes require that managing employees complete prelicensing training, examinations, and continuing education. Likewise, the statutes require that unlicensed employees and representatives receive training and annual continuing education. This administrative rule clarifies the procedures and standards for these courses and examinations. This administrative regulation also incorporates the application setting out the information that must be provided for licensure of rental vehicle agents and managing employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will inform all applicants for rental vehicle agent licenses and rental vehicle managing employee licenses of the department's procedures regarding prelicensing training, examinations, and continuing education and will identify the forms that must be used for application and certification.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation addresses a new license type created through HB 354 by the 2000 General Assembly. It will affect all applicants for licenses as rental vehicle agents, rental vehicle managing employees, and any unlicensed employees or representatives of the rental vehicle agent completing applications for rental vehicle insurance.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The rental vehicle managing employee is required to complete a department approved prelicensing course, to successfully complete a department approved examination, and to fulfill continuing education requirements. The continuing education required of rental vehicle managing employees is 6 hours, 4 of which are to be related to property and casualty insurance and 2 are to be related to ethics.

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

(a) Initially: The inflow of new applications will generate additional costs to process and may require additional personnel.

(b) On a continuing basis: The department will incur continuing costs to process new applications and existing renewals.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not require any new fees to be paid to the department for processing. Rather, the fees for the new licenses and location registrations are addressed in 806 KAR 4:010.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No. The fees for the new licenses and location registrations are addressed in 806 KAR 4:010.

(9) TIERING: Is tiering applied? Tiering is not applicable here.

There are 2 types of licenses regulated within 806 KAR 9:220. One is the license for the rental vehicle agent at whose business locations rental vehicle insurance is sold. The other is the license for the required managing employee who supervises and trains unlicensed employees and representatives at the point of sale. All applicants within each category are treated identically.

PUBLIC PROTECTION AND REGULATION CABINET
Division of Agent Licensing
(New Administrative Regulation)


RELATES TO: 2000 Ky Acts ch. 194
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110
provides that the Commissioner of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation sets forth the business entity applicant's election to obtain either the specialty credit insurance producer license or the agent license with a "limited line credit" line of authority.

Section 1. A business entity applicant may elect to apply for either a specialty credit insurance producer license or an agent license with "limited line credit" line of authority. The applicant's election shall become effective upon issuance of the license and shall remain binding upon the licensee until the time of renewal of the license.

Section 2. Upon renewal, the business entity licensee may either continue the existing license or elect to apply for other applicable licenses to sell credit insurance products. Any subsequent election for the specialty credit insurance producer license or the agent license with a "limited line credit" line of authority shall remain binding upon the licensee until the time of renewal of the license.

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 2 p.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, 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. Anyone who does not wish to be heard at the public hearing, may submit written comments on the proposed administrative regulation. 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: Suetta W. Dickinson, Department of Insurance, PO Box 517, Frankfort, Kentucky 40602-0517, (502) 564-6075.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suetta W. Dickinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: The 2000 General Assembly created a line of authority for agents for limited line credit insurance through HB 875 and a specialty credit insurance producer license through HB 875. Both authorize the sale of credit insurance products, but each is subject to a different regulatory framework. This administrative regulation requires the business entity applicant to elect one or the other of these licenses at the time of issuance and be bound to that choice at least until renewal.

(b) The necessity of this administrative regulation: This adminis-
trative regulation is necessary to enable the department to know at all times which license a business entity is operating under. Otherwise, the department cannot adequately protect credit insurance consumers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The related statutes create 2 separate licenses under 2 different regulatory frameworks to sell the same kind of credit insurance products. This regulation allows the business entity applicant to select whichever license it likes. But this regulation requires the business entity applicant to keep that license at least until renewal of the license. Every 2 years at renewal, the business entity may renew its existing license or apply for another license under which it may sell credit insurance products.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will inform all prospective business entities applicants of the choice between the 2 licenses and the requirement that the business entity be bound to that choice at least until renewal. Thus, the department will know which license the business entity is operating under and which laws to apply to the regulation of that business entity’s insurance activities.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all business entity applicants for a license as a specialty credit insurance producer or as an agent with a line of authority for limited line credit.

(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: Business entities will have to elect either to apply for a license as a specialty credit insurance producer or as an agent with a line of authority for limited line credit. And the business entity will be bound to that election at least until the time of renewal.

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

(a) Initially: There will be no cost impact to implement this administrative regulation.

(b) On a continuing basis: There will be no cost impact 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: The funding source will be the budget of the Kentucky Department of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The department does not anticipate an increase in fees or funding to implement this administrative 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? No. Tiering is not applied as this administrative regulation applies uniformly to all business entities applying for a license as a specialty credit insurance producer or as an agent with a line of authority for limited line credit.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Agent Licensing
(New Administrative Regulation)

806 KAR 9:300, Current agent licensees in good standing to receive equivalent license.

RELATES TO: KRS 304.9
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110
provides that the Commissioner of Insurance may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation sets forth the terms under which agent licensees in good standing immediately prior to the effective date of 2000 Ky. Acts ch. 393 will receive equivalent licenses for their licenses that are by law no longer issued on or after July 14, 2000.

Section 1. All individuals or business entities holding agent licenses in good standing pursuant to KRS 304, Subtitle 9 on July 13, 2000, whose licenses are no longer issued on or after July 14, 2000, because of changes in the law, shall be issued, at no additional cost, on or before the renewal date the applicable equivalent license or licenses, as determined by the department.

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOWN, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 2 p.m. at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, 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. Anyone who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. Anyone who does not wish to be heard at the public hearing, may submit written comments on the proposed administrative regulation. 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: Suetta W. Dickinson, Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602-0517, (502) 564-6075.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Suetta W. Dickinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: Through HB 875, the 2000 General Assembly discontinued several different agent licenses, such as limited credit licenses, general lines licenses, and combined life and health licenses. These agents are qualified in all respects to hold other equivalent agent licenses. This administrative regulation provides that the department issue equivalent licenses to these agents.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to enable the agents to continue selling and servicing insurance products as usual. Otherwise, there will be a disruption in the marketplace as well as in the lives of insurance professionals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The related statutes discontinue several different agent licenses but grant authority to sell the same kind of insurance under other agent licenses. This administrative regulation will provide that the equivalent agent licenses be issued to these agents at no cost to the agents.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative
regulation will allow these agents to continue selling and servicing the same insurance products they sold and serviced under the discontinued agent licenses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: N/A
   (b) The necessity of the amendment to this administrative regulation: N/A
   (c) How the amendment conforms to the content of the authorizing statute: N/A
   (d) How the amendment will assist in the effective administration of the statute: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all agents that were in good standing on July 13, 2000, and had one or more of their licenses discontinued by law on July 14, 2000.

(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: The agents with licenses that were discontinued by law on July 14, 2000, will be favorably impacted by having equivalent agent licenses issued to them. The equivalent agent licenses will allow these agents to continue selling and servicing the same insurance products as before July 14.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: There will be no cost impact to implement this administrative regulation.
   (b) On a continuing basis: There will be no cost impact to implement this administrative regulation.
   (c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source will be the budget of the Kentucky Department of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding to implement this administrative 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? No. Tiering is not applied as this administrative regulation applies uniformly to all agents whose licenses were discontinued by law on July 14, 2000.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(New Administrative Regulation)

606 KAR 17:230. Requirements regarding medical director's signature on health care benefit denials.

RELATES TO: KRS 304.17A-540, 304.17A-545
STATUTORY AUTHORITY: KRS 304.2-110(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the code. This administrative regulation establishes the procedure to be followed when a medical director's signature is required on health care benefit denials.

Section 1. Definitions. (1) "Adverse determination" is defined by KRS 304.17A-600(1).
   (2) "Coverage denial" is defined by KRS 304.17A-617(1).
   (3) "Enrollee" is defined by KRS 304.17A-500(4).
   (4) "Managed care plan" is defined by KRS 304.17A-500(8).
   (5) "Notice of coverage denial" means a letter, a notice, or an Explanation of Benefits statement advising of a coverage denial as defined by KRS 304.17A-617(1).
   (6) "Signature" means name, title, state of licensure and license number.

Section 2. Application. This administrative regulation shall apply to all managed care plans authorized by law to engage in managed care in the state of Kentucky.

Section 3. Appointment of Medical Director. (1) A managed care plan shall submit to the department:
   (a) Completed form HIPMC-MD-1, incorporated by reference in this Administrative regulation; and
   (b) Biographical resume of each individual who shall serve as the medical director of the managed care plan.

Section 3A. Biographical resume shall be included in the application material.

(2) A managed care plan shall furnish the department with any change in medical director within thirty (30) days of the change.

Section 4. Letters of Denial for Adverse Determination or Notices of Coverage Denial. (1) Letters of denial for adverse determination or notices of coverage denial shall be sent to an enrollee's last known address with a copy of same sent to the provider.

(2) Letters of denial requiring signature of the medical director of a managed care plan pursuant to KRS 304.17A-545(1)(d) shall include:
   (a) Letters of adverse determination, including denials, limitations, reductions and terminations of services, based on lack of medical necessity; and
   (b) Letters of adverse determination, including denials, limitations, reductions and terminations or services, based on lack of medical appropriateness.

Section 5. Notice of coverage denial shall not require the medical director's signature.


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

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 3 p.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Charlotte K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, ext. 293, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charlotte K. Hummel, Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the procedure to be used when a medical director's signature is required on health care benefit denials.
(b) The necessity of this administrative regulation: This administrative regulation clarifies when and what type of medical director's signature is acceptable for purposes of KRS 304.17A-545.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) provides that the commissioner make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the insurance code. This administrative regulation will aid in implementation of KRS 304.17A-545.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 304.2-110(1) provides that the commissioner make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the insurance code. This administrative regulation clarifies when and what type of medical director's signature is acceptable for purposes of KRS 304.17A-545.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable.
(b) The necessity of the amendment to this administrative regulation: Not applicable.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.
(d) How the amendment will assist in the effective administration of the statutes: Not applicable.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all licensed managed care plans in the state of Kentucky. Currently, there are 13 licensed managed care plans in this state.
(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: KRS 304.17A-545 is amended to require the medical director of a managed care plan sign a decision to deny a health care benefit. This administrative regulation establishes the procedure to be used when a medical director's signature is required on health care benefit denials. The department anticipates that this administrative regulation will have minimal effect upon the costs of complying with the statutory requirements.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: First year: This administrative regulation establishes the procedure to be followed when a medical director's signature is required on health care benefit denials. The department foresees little, if any, direct or indirect costs or savings on the administrative body as a result of this administrative regulation. There may be an increase in complaints as the regulation is implemented.
(b) On a continuing basis: Continuing costs or savings: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Department of Insurance does not anticipate 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: No
(9) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all managed care plans in the state of Kentucky.
Section 3. Incorporated by Reference. (1) Data Reporting Manual, HIPMC-DR-1 (100(0)) is incorporated by reference.

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

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: November 2, 2000
FILED WITH LFC: November 9, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 2000, at 9 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Charlotte K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, ext. 293, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charlotte K. Hummel, Counsel

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the data elements and the format for submitting annual reports to the Department of Insurance.

   (b) The necessity of this administrative regulation: This administrative regulation establishes a uniform method for submitting annual reports to the Department of Insurance. Uniformity in format will greatly assist the department in fairly and efficiently evaluating the information that is provided.

   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.17A-330 authorizes the commissioner to prescribe the format for reporting the information required by KRS 304.17A-330. This administrative regulation prescribes that format.

   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a uniform method for submitting annual reports to the Department of Insurance. Uniformity in format will greatly assist the department in fairly and efficiently evaluating the information that is provided.

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

   (a) How the amendment will change this existing administrative regulation: Not applicable.

   (b) The necessity of the amendment to this administrative regulation: Not applicable.

   (c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

   (d) How the amendment will assist in the effective administration of the statutes: Not applicable.

   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. In addition, this administrative regulation affects employer-organized associations that self-insure in the state of Kentucky. Currently there are no employer-organized associations that self-insure.

   (4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Statutorily, insurers authorized to write health insurance and employer-organized associations that self-insure are required to report information regarding the total premium by product type and market segment, total enrollment by product type and market segment, total cost of medical claims by product and by market segment, total policies canceled by type and the reasons therefor, and total health and medical services paid for by types of services and costs. This administrative regulation prescribes the format for reporting this information to the department.

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

      (a) Initially: The department will be required to establish a database for the collection, storage, compilation, and retrieval of the information provided pursuant to KRS 304.17A-330 and this administrative regulation. The department will also incur personnel costs associated with entering the information into and retrieving the information from the database.

      (b) On a continuing basis: The costs associated with maintaining the database to store, compile, and retrieve the information provided to the department pursuant to KRS 304.17A-330 and this administrative regulation will continue.

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

   (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative 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 does not apply since this administrative regulation applies to all insurers authorized to write health insurance and all employer-organized associations that self-insure in the state of Kentucky.

PUBLIC PROTECTION AND REGULATION CABINET
Division of Health Insurance Policy and Managed Care
(New Administrative Regulation)


RELATES TO: KRS 304.17A, 304.18-110, 304.18-120(2)
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.18-120(2)
NECESSITY, FUNCTION, AND CONTENT: KRS 304.2-110(1) provides that the commissioner may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.18-120(2) requires the department to promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy. This administrative regulation establishes those requirements.

Section 1. Definitions. (1) "Conversion policy" means an individual health policy issued to an insured person pursuant to a conversion privilege contained in a group health policy upon termination of the insured person's coverage under the group policy.

(2) "FFS" means a fee-fcr-service product type.

(3) "Group policy" is defined in KRS 304.18-110(1)(a).

(4) "HMO" means a health maintenance organization product type.

(5) "POS" means a point-of-service product type.

(6) "PPO" means a preferred provider organization product type.

Section 2. Plan Cost Sharing. (1) The out-of-pocket limit for covered expenses incurred during a plan year for a converted policy issued pursuant to a conversion privilege contained in a HMO or POS product shall be no more than:

(a) $6,000 for a single person; and
($2,000 for a family).

(2) The deductible and out-of-pocket limit for covered expenses incurred during a plan year for a converted policy issued pursuant to the conversion privilege contained in a group FFS or PPO product shall be no more than:

(a) $6,000 for a single person and an out-of-pocket limit of $6,000 after the deductible; and

(b) $12,000 for a family and an out-of-pocket limit of $12,000 after the deductible.

Section 3. Minimum Benefits. (1) A converted policy issued pursuant to the conversion privilege contained in a HMO or POS product shall include the following minimum benefits:

(a) In hospital care:

1. Inpatient hospital room and board benefits in a maximum copayment amount of $1,000 per admission; and

2. Coverage benefits in a maximum copayment amount of $1,000 per admission for transplants, including:
   a. Kidney;
   b. Cornea;
   c. Bone marrow;
   d. Heart;
   e. Liver;
   f. Lung;
   g. Heart/lung; and
   h. Pancreas.

(b) Outpatient care:

1. Ambulatory outpatient surgery benefits in a maximum copayment amount of $500 per visit;

2. Provider office visits benefits in a maximum copayment amount of thirty (30) dollars per visit; and

3. Diagnostic tests benefits in a maximum copayment amount of thirty (30) dollars per testing session.

(c) Emergency care:

1. Hospital emergency room benefits in a maximum copayment amount of $150 per visit; and

2. Ground ambulance benefits in a maximum copayment amount of seventy-five (75) dollars per use.

(d) Medicare hospice benefit.

(2) A converted policy issued pursuant to the conversion privilege contained in a group FFS or PPO product shall include the following minimum benefits:

(a) In hospital care:

1. Inpatient hospital room and board benefits in a maximum coinsurance amount of fifty (50) percent; and

2. Coverage benefits in a maximum coinsurance amount of fifty (50) percent for transplants, including:
   a. Kidney;
   b. Cornea;
   c. Bone marrow;
   d. Heart;
   e. Liver;
   f. Lung;
   g. Heart/lung; and
   h. Pancreas.

(b) Outpatient care:

1. Ambulatory outpatient surgery benefits in a maximum coinsurance amount of fifty (50) percent;

2. Provider office visits benefits in a maximum coinsurance amount of fifty (50) percent; and

3. Diagnostic tests benefits in a maximum coinsurance amount of fifty (50) percent.

(c) Emergency care:

1. Hospital emergency room benefits in a maximum coinsurance amount of fifty (50) percent; and

2. Ground ambulance benefits in a maximum coinsurance amount of fifty (50) percent.

(d) Medicare hospice benefits.

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 1 p.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Charlotte K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, Ext. 293, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charlotte K. Hummel, Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes minimum benefit requirements for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

(b) The necessity of this administrative regulation: KRS 304.18-120(2) requires the commissioner to promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes minimum benefit requirements for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes minimum benefit requirements for a conversion policy issued pursuant to the conversion privilege contained in a group health policy.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all insurers licensed to engage in insurance activities and issuing group health policies in the state of Kentucky. Currently there are 32 insurers authorized by the department to engage in insurance activities and issuing group health policies in the state.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: First year following implementation: KRS 304.18-120(2) amends KRS 304.18-120 to require the commissioner to promulgate administrative regulations to establish minimum benefits for a conversion policy issued pursuant to the conversion privilege contained in a group health policy. This administrative regulation establishes those requirements. To the extent insurers do not have a conversion product that already conforms to the regulation, the insurer will need to file a new product with the department or amend its existing product to conform with the department.

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

(a) Initially: First year: The department does not foresee any direct or indirect costs or savings on the administrative body as a result of this administrative regulation.
(b) On a continuing basis: None

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The department does not anticipate an increase in fees or funding will be necessary to implement this 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 since this administrative regulation applies to all insurers authorized to engage in insurance activities and issuing group health policies in the state of Kentucky.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Policy and Managed Care
(New Administrative Regulation)

806 KAR 17:280. Registration, utilization review, and internal appeal.

RELATES TO: KRS 304.17-412, 304.17A-609, 304.17A-613, 304.18-045, 304.32-147, 304.32-330, 304.38-225
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-609, 304.17A-613

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-609 requires that the department promulgate emergency administrative regulations regarding utilization review and internal appeal. KRS 304.17A-613 requires that the department promulgate emergency administrative regulations to develop a process for the registration of insurers or private review agents. This administrative regulation establishes requirements for the registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions.

Section 1. Definitions. (1) "Adverse determination" is defined in KRS 304.17A-600(1).

(2) "Board" means one (1) of the following governing bodies: (a) The American Board of Medical Specialties; (b) The American Osteopathic Association; or (c) The American Board of Podiatric Surgery.

(3) "Coverage denial" is defined in KRS 304.17A-617(1).

(4) "Department" means the Department of Insurance.

(5) "Insurer" is defined in KRS 304.17A-600(8).

(6) "Notice of coverage denial" means a letter, a notice, or an explanation of benefits statement advising of a coverage denial as defined by KRS 304.17A-617(1).

(7) "Policies and procedures" means the documentation which outlines and governs the steps and standards used to carry out functions of the utilization review program, the release of which is governed by KRS 304.17A-613(6).

(8) "Private review agent" is defined in KRS 304.17A-600(10).

(9) "Qualified personnel" is defined in KRS 304.17A-600(13).

(10) "Registration" is defined in KRS 304.17A-600(14).

(11) "Utilization review" is defined in KRS 304.17A-600(16).

(12) "Utilization review plan" is defined in KRS 304.17A-600(17).

Section 2. Registration Required. (1) The department shall issue or renew a registration to an applicant that has met all requirements of KRS 304.17A-600 through 304.17A-619 and 304.17A-623, where applicable, and this administrative regulation.

(2) An applicant seeking issuance or renewal of registration shall: (a) Submit an application for issuance or renewal of registration to the department as required by Section 4 of this administrative regulation; and (b) Pay an application fee as required by Section 3 of this administrative regulation.

(3) An application for issuance or renewal of registration shall be accompanied by the required documentation listed in Section 4 of this administrative regulation.

(4) An application for renewal of registration shall be submitted to the department at least ninety (90) days prior to expiration of the registration.

Section 3. Fees. (1) An application for issuance or renewal of registration shall be accompanied by a fee of $1,000; and (2) A submission of changes to utilization review policies or procedures to the department shall be accompanied by a fee of fifty (50) dollars.

Section 4. Application Process. (1) An applicant shall file an application for issuance or renewal of registration with the department which shall comply with the requirements established by KRS 304.17A-600 through 304.17A-619, including: (a) A utilization review plan that includes the items listed in KRS 304.17A-609(1);

(b) The identification of utilization review criteria, including criteria for review of inpatient and outpatient services;

(c) Types and qualifications of personnel performing utilization review in compliance with KRS 304.17A-607(1)(a), including: (1) A list of three (3) individuals responsible for the operation of the entity performing utilization review;

(2) Names, addresses, and telephone numbers of the medical director and contact persons for questions regarding the filing of the application; and

(3) Qualifications of personnel employed directly or under contract by various job categories;

(d) A toll-free telephone number to contact the insurer or private review agent, as required by KRS 304.17A-607(1)(e) and 304.17A-609(3);

(e) A copy of the policies and procedures required by KRS 304.17A-609(4) regarding reasonable accessibility during normal business hours;

(f) If preauthorization is required, a copy of the policies and procedures to ensure availability twenty-four (24) hours a day, seven (7) days a week, including the response time to return telephone calls if an answering machine is used, in accordance with KRS 304.17A-607(1)(f);

(g) A copy of the policies and procedures by which an insurer or private review agent provides a notice of review decision, which complies with KRS 304.17A-607(1)(i) and 304.17A-617(2)(e), concerning a denial, limitation, reduction or termination of health care benefits and which includes: (1) Date of the review decision;

(2) Instructions for filing an internal appeal, including information concerning a covered person's right to request a review of the appeal by a board eligible or certified physician; and

(3) Information relating to the availability of: a. A review of a coverage denial by the department following completion of the internal appeal process; and

b. A review of an adverse determination by an independent review entity following completion of the internal appeal process, in accordance with KRS 304.17A-623.

(h) If only a part of the utilization review process, rather than the entire utilization review process, is delegated, a description of the: 1. Delegated function;

2. Entity to whom the function was delegated by name, address, and telephone number; and

3. Monitoring mechanism used by the insurer or private review agent to assure compliance with paragraph (g) of this subsection.

(i) A sample copy of the notice of review decision letter to be sent in compliance with paragraph (g) of this subsection;

(j) A copy of the policies and procedures by which a covered person or provider can appeal an adverse determination or coverage denial in accordance with KRS 304.17A-617, including: 1. The method by which an appeal may be initiated, including: a. An oral request followed up by an abbreviated written request, or a written request for an expedited internal appeal;
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b. A written request for a nonexpedited internal appeal; and
c. The completion of any specific forms, including a medical record release consent form;
2. Time frames for conducting review of an initial decision and for issuing an internal appeal decision;
3. Procedures for expedited and nonexpedited appeals;
4. Qualifications of the person conducting internal appeal of the initial decision; and
5. Information relating to the internal appeal decision to be included in the notice of review decision, including:
   a. The name, title, and, if applicable, the license number, state of licensure, and certification of specialty of the person making the internal appeal decision;
   b. A description of the basis for the appeal;
   c. The decision in clear terms and sufficient detail to explain the decision; and
   d. Instructions for initiating the external review process.
6. A sample copy of the internal appeal decision letter to be sent in compliance with paragraph (b) of this subsection;
(h) A copy of the policies and procedures to:
   1. Protect the confidentiality of medical information in accordance with KRS 304.17A-609(5);
   2. Comply with requirements of KRS 304.17A-615 relating to payment if the insurer or private review agent fails to:
      a. Provide a timely utilization review decision; or
      b. Be accessible, as determined by verifiable documentation of a provider's attempts to contact, including verification by electronic transmission records or telephone company logs;
   3. Comply with requirements of KRS 304.17A-619 regarding the submission of new clinical information prior to the initiation of the external review process;
4. Ensure consistent application of review criteria for inpatient and outpatient services in the rendering of review decisions; and
5. Comply with requirements of KRS 304.17A-607(1)(b) regarding the review and comment on protocols by participating physicians and other providers, as applicable. The policy and procedure shall include a description of the method used for considering any comments made by the participating providers.
   (l) A copy of the written materials that provide covered persons and providers with the following information at the time of enrollment and thereafter upon request, and the mechanism for disseminating the written materials:
   1. Their rights, responsibilities, and liabilities in accessing covered services subject to utilization review, including the documentation requirements of KRS 304.17A-615 and identify:
      a. When utilization review is required;
      b. Who may request utilization review; and
      c. When the insurer or utilization review agent shall be contacted;
   2. Telephone numbers and hours of operation of the insurer or private review agent and how to contact the insurer or private review agent for a review determination after normal business hours;
   3. Time frames for utilization review decisions in accordance with KRS 304.17A-607(1)(h), including an additional twenty-four (24) hours for an insurer or private review agent to obtain needed information to provide a preadmission utilization review decision;
   4. Explanation that the failure of an insurer to make a timely determination within the required time frames shall be deemed to be an adverse determination for the purpose of initiating an internal appeal;
   5. The right to file a written complaint relating to utilization review with the department in accordance with KRS 304.17A-613(8);
   6. Appeal rights to challenge an adverse determination or coverage denial, including:
      a. Internal appeals, including expedited appeals; and
      b. External reviews, including expedited reviews;
   7. The right of a covered person to request departmental review of a coverage denial after an insurer or private review agent upholds a coverage denial on internal appeal, in accordance with KRS 304.17A-617(2)(c);
   8. The option of a covered person to request that an internal appeal be conducted by a board eligible or certified physician in the appropriate specialty or subspecialty area in accordance with KRS 304.17A-617(2)(c);
   9. The right of a provider to review and comment on protocols pursuant to KRS 304.17A-607(1)(b); and
10. The right of a covered person to submit new clinical information at any time during an internal appeal or external review of an adverse determination or coverage denial to an:
   a. Insurer;
   b. Provider; and
   c. Independent review entity; and
   (m) If the applicant is a private review agent only, a listing of the entities for which the private review agent is performing utilization review in this state in accordance with KRS 304.17A-607(4).
(2) Upon receipt of an application for issuance or renewal of registration, the department shall:
(a) Inform the applicant if supplemental information is or is not needed;
1. Applicant shall submit requested information within thirty (30) days; or
2. If requested information is not provided to the department within thirty (30) days, the department shall:
   a. Deny the application for issuance or renewal of registration; and
   b. Not refund the application fee.
(b) Review the application and material required by KRS 304.17A-600 through 304.17A-619 and 304.17A-623, and this administrative regulation; and
(c) Approve or deny issuance or renewal of registration.

Section 5. Denial or Revocation Hearing Procedure. Upon the denial of an application for issuance or renewal of a registration, or suspension or revocation of an existing registration, the department shall give written notice of its action and advise the applicant or registration holder that a request for a hearing may be filed in accordance with KRS 304.2-310.

Section 6. Utilization Review Complaint Process. (1) A written complaint regarding utilization review shall be filed with the department in accordance with KRS 304.17A-613(8):
(a) A written complaint may be:
   1. Handwritten or typed;
   2. Electronic; or
   3. Transmitted by facsimile.
(b) A written complaint shall include any information relating to the complaint.
(2) A copy of the complaint and a letter from the department shall be sent to the insurer or private review agent in accordance with KRS 304.17A-613(8), requiring the following:
   (a) Any information relating to the complaint; and
   (b) A response by the insurer or private review agent to the complaint, including corrective actions to resolve the complaint, if any, including time frames for those actions.
(3) Within thirty (30) days of completion of its corrective action, an insurer or private review agent shall notify the department of the implementation of the corrective action.
(4) The number, severity, recurrence, and type of complaints, if any, shall be considered by the department in reviewing an application for issuance or renewal of registration, as required by KRS 304.17A-613(9).

Section 7. Internal Appeals. In addition to the requirements of KRS 304.17A-617, as part of an internal appeals process, an insurer or private review agent shall:
(1) Allow a covered person to request an internal appeal within sixty (60) days of receipt of a denial letter;
(2) Provide written notification of a decision as required by KRS 304.17A-617(2)(a), which shall include the:
   (a) Name, title, and, if applicable, the license number, state of licensure and specialty certifications, if any, of the person performing the review;
   (b) Elements required in a letter of denial in accordance with 806 KAR 17-230;
   (c) Name and telephone number of a contact person who may provide information relating to internal review; and
   (d) Date the decision was rendered;
(3) Maintain written records of all internal appeals received during a calendar year, including the:
(a) Reason for the internal appeal;
(b) Date of request that the internal appeal was received by the insurer or private review agent;
(c) Date the internal appeal was conducted;
(d) Date of the internal appeal decision;
(e) Internal appeal decision; and
(f) Information required by Section 4(1)(g)5 of this administrative regulation; and
4 Retain a record of an internal appeal decision for five (5) subsequent years in accordance with 806 KAR 2:070.

Section 8. Contents of a Denial Letter and Notice of Coverage Denial. (1) A denial letter shall:
(a) Be issued by an insurer or private review agent for an adverse determination in accordance with 806 KAR 17:230; and
(b) Include the elements as required by KRS 304.17A-607(1)(i) and 304.17A-617(2)(e), and by Section 4(1)(g) of this administrative regulation; and
(2) A notice of coverage denial, whether issued prior to or following delivery of the service, shall include:
(a) Identification of the provision of the schedule of benefits or exclusions that demonstrate that coverage is not available;
(b) The name and phone number of a contact person who can provide information regarding the notice of coverage denial;
(c) Instructions and timeframe for initiating an appeal; and
(d) The availability of a review of the coverage denied by the department following completion of the internal appeal process.

Section 9. Reporting Requirements. By March 31 of each calendar year, an insurer or private review agent shall submit to the department a HPICM-UR-2 (7/00) as incorporated by reference in this administrative regulation, for the previous calendar year.

Section 10. Maintenance of Records. An insurer or private review agent shall maintain:
1 Adequate documents in order to assure compliance with KRS 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147 and 330, 304.69-225 and 304.47-050. Documentation shall include:
(a) Proof of the volume of reviews conducted per the number of review staff broken down by staff answering the phone;
(b) Availability of physician consultation; and
(c) Other information which shall provide proof that based on call volume, the insurers’ private review agent has sufficient staff to return calls in a timely manner;
(2) Documentation in order to assure compliance with KRS 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147 and 330, 304.39-225 and 304.47-050. Documentation shall include:
(a) Proof of the volume of phone calls received on the toll-free phone number per the number of phone lines; and
(b) An abandonment rate;
(3) Documentation to assure compliance with KRS 304.17A-600 through 304.17A-619, 304.18-045, 304.32-147 and 330, 304.39-225 and 304.47-050. Documentation shall include proof of the insurer or private review agent’s response time for returned phone calls to a provider when a message is taken.

Section 11. Cessation of Operations to Perform Utilization Review. (1) Upon a decision to cease utilization review operations in Kentucky, an insurer or private review agent shall submit the following to the department ninety (90) days prior to ceasing operations:
(a) Written notification of the cessation of operations, including the proposed date of cessation and the number of pending utilization review decisions with projected completion dates; and
(b) A written action plan for cessation of operations, which shall be subject to approval by the department prior to implementation.
(2) Annual reports required pursuant to Section 9 of this administrative regulation shall be submitted to the department prior to ceasing operations.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Utilization Review Registration Application, HPICM-UR-1 (11/00);
(b) Annual Utilization Review Report Form, HPICM-UR-2 (7/00).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 2000, at 11 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2000, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Charlotte K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40622, PH: (502) 564-6032, ext. 293, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Charlotte Kay Hummel, Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for the registration of insurers or private review agents, and the utilization review process, including internal appeal of decisions.
(b) The necessity of this administrative regulation: KRS 304.17A-609 requires that the department promulgate administrative regulations regarding utilization review and internal appeal. KRS 304.17A-613 requires that the department promulgate administrative regulations to develop a process for the registration of insurers or private review agents.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is regarding utilization review and internal appeal as required by KRS 304.17A-609. This administrative regulation also develops a process for the registration of insurers or private review agents as required by KRS 304.17A-613.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for the registration of insurers or private review agents and the utilization review process, including internal appeal of decisions, as required and anticipated by KRS 304.17A-609 and KRS 304.17A-613.
(2) This is an amendment to an existing administrative regulation, provide a brief summary of:
(a) The amendment will change this existing administrative regulation: Not applicable.
(b) The necessity of the amendment to this administrative regulation: Not applicable.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.
(d) How the amendment will assist in the effective administration of the statutes: Not applicable.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all insurers licensed to engage in health insurance activities in the state of Kentucky and private review agents. Currently, there are 60 health insurers authorized by the department to engage in health insurance activi-
ties in this state, and an unknown number of private review agents.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: First year following implementation: KRS 304.17A-609 requires that the department promulgate emergency regulations regarding utilization review and internal appeal. KRS 304.17A-613 requires that the department promulgate emergency administrative regulations regarding utilization review and internal appeal. Because the requirements currently exist by statute, the department does not anticipate that this administrative regulation will have a substantial effect upon the costs of complying with the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The department anticipates both direct and indirect costs on the administrative body as a result of this administrative regulation. The department will have additional costs in the amount of $87,000 the first year. The costs will be absorbed within the Department of Insurance.
(b) On a continuing basis: $79,000 additional costs the second year and thereafter.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The costs will be absorbed within the resources available to the Department of Insurance and through the application fee required for registration of utilization review agents and for changes in utilization review entity's policies and procedures.

(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: Yes. An application fee is required for registration of utilization review agents and for changes in utilization review entity's policies and procedures.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. An application fee is required for registration of utilization review agents and for changes in utilization review entity's policies and procedures.

(9) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers authorized to engage in health insurance activities in the state of Kentucky and to all private review agents who desire to perform utilization review functions in the state of Kentucky.

CABINET FOR PUBLIC PROTECTION AND REGULATION
Division of Health Insurance Policy and Managed Care (New Administrative Regulation)


RELATES TO: KRS 304.17A-621 through 304.17A-631
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-629
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-629 requires that the department promulgate administrative regulations regarding the Independent External Review Program. The administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.

Section 1, Definitions. (1) "Adverse determination" is defined in KRS 304.17A-600(1).
(2) "Assign" or "assignment" means selection of an independent review entity by an insurer, and acceptance of a request to conduct an external review by an independent review entity.
(3) "Coverage denial" is defined in KRS 304.17A-617(1).
(4) "Covered person" is defined in KRS 304.17A-600(4).
(5) "Department" means the Department of Insurance.

(6) "Electronic" or "electronically" is defined KRS 304.17A-700(7).
(7) "External review" is defined by KRS 304.17A-600(5).
(8) "Independent review entity" is defined in KRS 304.17A-600(7).
(9) "Insurer" is defined in KRS 304.17A-600(8).
(10) "Review" means an individual selected by the independent review entity to conduct an external review and make a recommended decision to the independent review entity.

Section 2. Requirements of an Insurer. (1) An insurer shall:
(a) Disclose to a covered person in a consumer friendly written format the following information concerning an external review:

1. At the time of enrollment, the right to an external review in accordance with KRS 304.17A-505(1); (g);
2. The availability of an external review in the insurer's notice of an adverse determination or notice of coverage denial in accordance with KRS 304.17A-623(1); and
3. Instructions for initiating an external review in the internal appeal decision letter including:
   a. Whether the appeal must be in writing;
   b. How to complete any forms;
   c. Applicable time frames;
   d. The name and phone number of a contact person who can provide additional information about an external review; and
   e. Any other required documentation.

(b) Allow a covered person, authorized person or provider acting on behalf of and with the consent of a covered person, to submit an oral request, followed up by an abbreviated written request, for an expedited external review;

(c) Provide the following information relating to an external review in the policy or certificate of coverage issued to a covered person and upon request:

1. The circumstances whereby the following types of external review shall be provided:
   a. Nonexpedited external review in accordance with KRS 304.17A-623(3), (4) and (6); and
   b. Expedited external review in accordance with KRS 304.17A-623(10), (11) and (12).
2. The filing fee for requesting an external review in accordance with KRS 304.17A-623(5);
3. That the cost for an external review by an independent review entity shall be paid by the insurer in accordance with KRS 304.17A-625(5);
4. The procedure for submitting:
   a. An oral request followed up by an abbreviated written request, or a written request for an expedited external review;
   b. A written request for a nonexpedited external review;
   c. The completion of any specific forms, including a medical records release consent form;
5. The time frame for:
   a. Submitting a request for external review in accordance with KRS 304.17A-623(4);
   b. Rendering a decision by an independent review entity in accordance with KRS 304.17A-623(12) and (13); and
   c. Compliance of an insurer with a decision of the independent review entity;
   b. the telephone number and name of a contact person of the insurer who may provide information relating to an external review;
   c. A statement relating to the confidentiality treatment of medical records and information relating to the external review; and
   d. A statement of the availability and a description of a complaint process through the department relating to:
   a. A covered person's right to an external review in accordance with KRS 304.17A-623(8); and
   b. The action of an independent review entity in accordance with KRS 304.17A-625(10);
6. If an external review is requested by an authorized person or provider acting on behalf of a covered person, obtain the:
   a. Written authorization of representation; and
   b. Consent to release medical records to the independent review agent;
   e. Make a determination whether an external review is warranted in accordance with KRS 304.17A-623(9) and (10), and notify the requester of that determination within the following time periods:
1. For expedited reviews, within sufficient time to comply with KRS 304.17A-623(1); or
2. For nonexpedited reviews, within five (5) business days of receipt of the request.

(i) Upon a determination that an external review is warranted, assign an Independent review entity to perform the external review from a list of certified independent review entities which shall be provided by the department. The assignment of an independent review entity from the list shall be on a consecutive rotation basis, using all independent review entities on the list, subject to Section 3(1) of this administrative regulation;

(g) Upon the assignment of an independent review entity, complete and send to the department within three (3) business days an Assignment of Independent Review Entity Form, HIPMC-IRE-2 (7/00) which is incorporated by reference in this administrative regulation;

(h) Upon assignment of an independent review entity:
1. For an expedited external review:
   a. Comply with the time period established by KRS 304.17A-623(1); and
   b. Within twenty-four (24) hours of assignment deliver to the independent review entity:
      (i) A copy of the consent to release medical records to the independent review entity; and
      (ii) All information required to be considered by the independent review entity, as set forth in KRS 304.17A-625(1);
   2. For a nonexpedited external review:
      a. Comply with the time period established by KRS 304.17A-623(13); and
      b. Within three (3) business days of assignment deliver to the independent review entity:
         (i) A copy of the consent to release medical records to the independent review entity; and
         (ii) All information required to be considered by the independent review entity, as set forth in KRS 304.17A-625(1);
   3. Upon receipt of new information submitted pursuant to KRS 304.17A-623(6)(b):
      1. Immediately send a copy of the new information as applicable to:
         a. Covered person or authorized person;
         b. Provider; and
         c. Independent review entity.
      2. Consider reversal of the internal appeal decision based upon the new information; and
      3. If the internal appeal decision is reversed:
         a. Provide written notice of the reversal as applicable to the:
            (i) Covered person or authorized person;
            (ii) Provider who initiated the appeal; and
            (iii) Independent review entity; and
         b. Pay the fee in accordance with Section 3(19)(b) of this administrative regulation;
   4. Within thirty (30) days of receipt of a decision relating to external review from an independent review entity, implement the decision;
   5. Upon receipt of an itemized statement of services rendered and costs, pay the independent review entity within thirty (30) days;
   6. Maintain a written record of each external review, and
   7. Provide a copy of the covered person’s health insurance policy to the independent review entity.

(ii) If a request for external review is denied by an insurer:
(a) Written notification shall be provided by the insurer to the person requesting the external review and shall include:
   1. The date the request for external review was received by the insurer;
   2. A statement relating to the nature of the request;
   3. The rationale of the insurer denying the request;
   4. A statement relating to the availability of review by the department if a dispute arises regarding the right to external review;
   5. The toll-free telephone number of the department; and
   6. The name and telephone number of a contact person who shall provide information relating to the denial of the request.
(b) Upon request by the department, the insurer shall provide:
   1. A copy of the written notification described in paragraph (a) of this subsection; and
   2. Additional information deemed necessary by the department.

Section 3. Requirements of an Independent Review Entity. An independent review entity shall:
(1) Accept a request for assignment unless:
   (a) A conflict of interest exists; or
   (b) Confidentiality issues exist.
(2) Upon receipt of a request for assignment from an insurer:
   (a) Determine whether a conflict of interest exists and confidentiality requirements of an insurer can be met; and
   1. Immediately provide verbal notification, followed by written notification to an insurer of the rejection of an assignment if:
      a. A conflict of interest exists; or
      b. Confidentiality requirements of an insurer cannot be met;
   2. Within twenty-four (24) hours of receipt of the request for assignment, provide written notification to an insurer of the acceptance of an assignment if:
      a. No conflict of interest exists; and
      b. Confidentiality requirements of an insurer can be met; and
   (c) Maintain a written record of:
      1. Whether the external review relates to an adverse determination or a coverage denial, which requires resolution of a medical issue;
      2. The specific question or issue to be resolved by the external review; and
      3. Whether the external review merits expedited or nonexpedited external review;
   (3) For each external review, obtain and maintain on file a signed statement of a reviewer that to the best of the reviewer’s knowledge there is no conflict of interest;
   (4) Upon the receipt of new information from a covered person, authorized person or provider acting on behalf of and with the consent of a covered person, immediately send a copy of the new information to the following, as applicable:
      (a) Covered person or authorized person;
      (b) Provider; and
      (c) Insurer;
   (5) Have a reviewer with expertise in:
      (a) Health insurance benefits and contracts and who shall be available to serve as a reviewer, in addition to a health care professional reviewer, in an external review of a coverage denial which requires the resolution of a medical issue in accordance with KRS 304.17A-617(3)(d); and
      (b) Health care and who shall:
         1. Be available to conduct an external review of a coverage denial which requires resolution of a medical issue and an adverse determination; and
         2. Meet the following requirements:
            a. Hold active licensure in a state of the United States;
            b. Have recent experience or familiarity with current body of knowledge and applicable specialty practice;
            c. Have at least five (5) years of experience in the specialty of the external review;
            d. Hold current board certification by:
               (i) The American Board of Medical Specialties if the reviewer is a medical doctor;
               (ii) The American Osteopathic Association if the reviewer is a doctor of osteopathic medicine; or
               (iii) The American Board of Pediatric Surgery if the reviewer is a doctor of pediatric medicine;
   (6) Establish criteria in accordance with KRS 304.17A-627(6), (7), and (9) for:
      (a) Selection of a qualified reviewer, including the initial verification and re-verification every two (2) years of credentials of the reviewer;
      (b) Ensuring that an appropriate reviewer performs the external review;
      (c) Ensuring that an appropriate number of reviewers are used for the external review; and
      (d) Ensuring that at least one (1) reviewer qualified in each medical specialty is available for external review;
   (7) Have a medical director or clinical director with professional postresidency experience in direct patient care who shall:
      a. Hold a current license to practice medicine in a state of the United States;
      b. Provide guidance for the medical aspects of the external review process;
      (c) Provide guidance for the medical aspects of the quality management pro-
gram; and
(d) Oversee the medical aspects of the reviewer credentialing program;
(8) Establish and implement criteria for determination of the need for a time extension of:
(a) Twenty-four (24) hours to render a decision in an expedited external review in accordance with KRS 304.17A-623(12); and
(b) Fourteen (14) calendar days to render a decision in a nonexpedited external review in accordance with KRS 304.17A-623(13);
(9) Provide written notification of a decision as required by KRS 304.17A-625(6), which shall include the:
(a) Name, title, and license number, state of licensure and specialty certifications, if any, of the reviewer;
(b) Name and telephone number of a contact person who may provide information relating to external review; and
(c) Date the decision was rendered.
(10) Provide written notification of the decision to:
(a) The covered person or authorized person, treating provider, and insurer within two (2) business days of making the decision; and
(b) The department by:
1. Copying the department on the written notification to the covered person; and
2. Completing an External Review Decision Notification Form, HIPMC-IRE-4 (700) incorporated by reference herein, within ten (10) business days of rendering a decision.
(11) Establish written policies and procedures for maintenance and the confidential treatment of external review records in accordance with KRS 304.17A-623(9) and applicable state and federal law;
(12) Maintain a written record of an external review for a minimum of five (5) years in accordance with 806 KAR 2:070 which shall include as applicable:
(a) All documentation relating to the external review pursuant to KRS 304.17A-623(1);
(b) The independent review entity's decision regarding each issue identified in the external review;
(c) The name, credentials, and specialty of the reviewer;
(d) Medical evidence and information considered during the review;
(e) References to any national clinical criteria upon which the independent review entity's decision was based;
(f) A copy of relevant policy language of the insurer, including any relevant contractual definition of medical necessity;
(g) A copy of the adverse determination or coverage denial, which requires resolution of a medical issue and the internal appeal decision; and
(h) A copy of the correspondence and communication between the independent review entity, the reviewer and any other person regarding the external review, including a copy of the final decision letters;
(13) Provide toll-free telephone access that:
(a) Operates at a minimum from 9 a.m. until 5 p.m. of each business day in each time zone where the services under review are in dispute; and
(b) Allows for:
1. Receiving after-hours requests for external review; and
2. Acting on expedited external review requests in accordance with KRS 304.17A-623(12);
(14) If an external review function, or any portion thereof, is delegated or subcontracted to another person or organization, submit:
(a) Policies and procedures relating to oversight activities to ensure compliance with requirements of an independent review entity as established in KRS 304.17A-623 and 304.17A-625, and this administrative regulation; and
(b) A copy of the agreement whereby the external review function is delegated or subcontracted;
(15) Establish and maintain a written quality assurance program in accordance KRS 304.17A-627(8) which shall be made available to the public upon request and shall include a written plan which addresses:
(a) Scope and objectives;
(b) Program organization;
(c) Monitoring and oversight mechanisms; and
(d) Evaluation and organizational improvement of external review activities, including:
1. Objectives and approaches used in the monitoring and evaluation of external review activities, including the systematic evaluation of complaints for patterns and trends;
2. The implementation of an action plan to improve or correct an identified problem; and
3. The procedures to communicate the results of an action plan to its employees.
(16) Provide written notification to the department of:
(a) A change in status of accreditation for external review within five (5) business days of the status change, if accredited pursuant to KRS 304.17A-600(7);
(b) Any imposition of a sanction or receipt of letter of reprimand related to external review, upon receipt; and
(c) A change in the application submitted to and approved by:
1. The National Committee for Quality Assurance or the American Accreditation Health Care Commission, if applicable; and
2. The department for certification as an independent review entity;
(17) Submit a copy of any change to information provided on the Application for Certification of an Independent Review Entity in writing to the department for approval. A change shall not become effective until thirty (30) days following approval by the department.
(18) Submit a new application for certification if requested by the department following notification of a material change in the application information as required by KRS 304.17A-627(12);
(19) Establish a fee structure, to be available upon request, for each type or level of external review, including at a minimum, a fee for:
(a) A completed external review of:
1. A coverage denial, which requires resolution of a medical issue; and
2. An adverse determination; and
(b) An incomplete external review due to reversal of an internal appeal decision in accordance with Section 2(1)(h)2 of this administrative regulation;
(20) Immediately terminate an external review and provide written notification of the termination to the insurer requesting the external review, as appropriate, and the department if:
(a) A conflict of interest or confidentiality issue is discovered at any time during the external review process; or
(b) A reversal of a coverage denial or adverse determination is received in writing from the insurer;
(21) If more than one (1) reviewer is utilized in making a decision:
(a) Render an overall decision based upon the majority decision of the reviewers; and
(b) If the reviewers are evenly split as to whether the recommended or requested health care service or treatment should be covered, request an additional reviewer to make a binding majority decision;
(22) Implement a written policy and procedure for each aspect of an external review process, including:
(a) Processing of the request for assignment of an external review from an insurer;
(b) Receipt and maintenance of medical records and information from insurer;
(c) Ensuring access to a sufficient number of appropriate qualified reviewers;
(d) Ensuring the credentialing, selection and notification of a reviewer of external review;
(e) Rendering a timely decision and issuance of notification of the decision;
(f) Ongoing monitoring and evaluation of the performance of a reviewer;
(g) Monitoring and oversight of a delegated external review function, if any;
(h) Billing for and collection of fees for external review, including filing fee of covered person and cost of external review borne by the insurer;
(i) Collecting and reporting data;
(j) Receipt and consideration of new clinical information;
(k) Termination of external review; and
(l) Response to a request for information relating to a complaint filed with the department or by others; and
(23) Conduct a periodic formal program for training reviewers and
provide a written record of the training to the department upon re-
quest.

Section 4. Application Process for Certification to Perform External
Reviews. (1) To perform an external review, an independent review
entity shall be certified in accordance with requirements as established
in KRS 304.17A-627 and this administrative regulation.

(2) To be certified to perform an external review, an independent
review entity shall:
(a) If it is accredited as an external review organization in ac-
cordance with KRS 304.17A-600(7):
1. Complete and submit to the department the applicable sections
of an Application for Certification of an Independent Review Entity,
HIPMC-IRE-1 (7/00), incorporated by reference in this administrative
regulation;
2. Submit a fee with the application for certification as required
by Section 5 of this administrative regulation, made payable to the Ken-
tucky State Treasurer; and
3. Enclose with the application, a copy of the following accredita-
tion documents:
   a. A completed application required and approved by the National
      Committee for Quality Assurance or the American Accreditation
HealthCare Commission for accreditation purposes;
   b. All written documents provided to the National Committee for
      Quality Assurance or the American Accreditation HealthCare
      Commission to demonstrate compliance with its standards of accreditation;
   c. The most current accreditation status report issued by National
      Committee for Quality Assurance or the American Accreditation
      HealthCare Commission, if any; and
   d. The certificate of accreditation as an external review organiza-
      tion, which includes the expiration date of accreditation.
(b) If it is not accredited in accordance with KRS 304.17A-600(7):
1. Complete and submit to the department the Application for
   Certification of an Independent Review Entity, HIPMC-IRE-1 (7/00), as
   incorporated by reference in this administrative regulation;
2. Submit a fee with the application for certification as required by
   Section 5 of this administrative regulation, made payable to the Ken-
tucky State Treasurer; and
3. Enclose with the application for certification, written documen-
tation which supports compliance with the requirements of an inde-
dependent review entity as established in KRS 304.17A-627(1) and this
administrative regulation.
(3) An application for certification shall be submitted to the de-
partment at least ninety (90) days prior to expiration of the current
certification.

Section 5. Fees. (1) Department fees.
(a) An application for certification as an independent review entity
shall be accompanied by a fee to pay administrative costs as follows:
1. An applicant not accredited in accordance with KRS 304.17A-
   600(7) shall pay an application fee in the amount of $500; or
2. An applicant accredited in accordance with KRS 304.17A-
   600(7) shall pay an application fee in the amount of $250.
(b) A submission of changes in information included in the appli-
cation to the department in accordance with KRS 304.17A-627(2), or
any change in application information after certification, shall be ac-
accompanied by a fee of fifty (50) dollars.
(2) Independent review entity fees.
(a) The total fee charged for an external review shall not exceed
$800 unless justification for a higher fee is submitted to the depart-
ment for approval prior to billing the insurer in the case of unusual or
complicated circumstances; and
(b) The twenty-five (25) dollar filing fee to be paid by the covered
person shall:
1. Be billed by the independent review entity upon assignment; or
2. Be waived if it creates a financial hardship in accordance with
KRS 304.17A-623(5). The independent review entity shall accept the
following as evidence of financial hardship:
   a. Gross income of the covered person below 200 percent of the
      federal poverty level based upon family size as shown by a federal
      income tax return for the previous year; or
   b. The covered person’s participation in one (1) of the following
      programs:
      (i) National Prescription Drug Patient Assistance;
      (ii) Kentucky Transitional Assistance;
      (iii) Medicaid; or
      (iv) Unemployment Insurance; or
3. Not be assessed if an external review is conducted following
   the submission of new information in accordance with KRS 304.17A-
   623(6)(b).

Section 6. Department Review of Application for Certification or
Change to Information Provided on the Application. (1) Upon receipt of
an application for certification or a change to information provided on
the application, the department shall:
(a) Inform the applicant if supplemental information is or is not
   needed:
   1. Applicant shall submit requested information within thirty (30)
      days; or
   2. If requested information is not provided to the department within
      thirty (30) days, the department shall:
      a. Deny the application for certification or the change to informa-
         tion provided on the application; and
   b. Not refund the applicable fee submitted in accordance with
      Section 6(1) of this administrative regulation.
   (b) Review the application and information required by KRS
      304.17A-627 and this administrative regulation;
   (c) Make a determination whether a conflict of interest or an ap-
      propriate action is pertinent and;
   (d) Approve or deny certification, or the change to information
      provided on the application, of an independent review entity within
      ninety (90) days;
(2) An independent review entity certificate shall expire on the
second anniversary of the certification date unless it is renewed by
submitting a new application for certification in accordance with Sec-
 tion 4(2) of this administrative regulation.

Section 7. Denial, Decertification, or Suspension Hearing Proce-
dure. Upon the denial of certification, decertification, or suspension of
a certification, the department shall give written notice of its action and
advise the applicant or certificate holder that a request for a hearing
may be filed in accordance with KRS 304.2-310.

Section 8. Independent Review Entity Complaint Process. (1) A
 copy of the complaint filed pursuant to KRS 304.17A-625(13) and a
letter from the department requesting a written response to the com-
plaint shall be sent to the independent review entity.
(2) The independent review entity shall respond in writing to the
complaint and submit to the department within five (5) business days
of receipt of the letter from the department the following:
(a) Any information relating to the complaint;
(b) Corrective actions to resolve the complaint, if any, including
time frames for those actions; and
(c) A mechanism to evaluate the corrective action, if any.
(3) Upon receipt of the written response of the independent review
entity, the department shall:
(a) Take action in accordance with KRS 304.17A-625(3); and
(b) Notify the complainant of action taken, if any.

Section 9. Department Investigations. The commissioner, may,
upon his own action, conduct investigations of an independent review
entity pursuant to KRS 304.2-100.

Section 10. Reporting Requirements. (1) An independent review
entity shall, as a condition of certification, submit to the department by
March 31 of each year for the previous calendar year, the following
reports incorporated by reference in this administrative regulation:
(a) Data Reporting Requirements for Independent Review Enti-
ries, HIPMC-IRE-4 (7/00); and
(b) Annual Independent Review Entity Report Form, HIPMC-IRE-
5 (7/00); and
(2) An insurer shall submit to the department by March 31 of each
year for the previous calendar year the Annual Internal Appeal and
External Review Report Form, HIPMC-ERA-1 (7/00), which is incorpo-
rated by reference in this administrative regulation.
Section 11. Cessation of Operations to Perform External Review. (1) Upon a decision to cease external review operations in Kentucky, an independent review entity shall:
(a) Immediately notify the department in writing of its decision to cease accepting new assignments; and
(b) Submit the following to the department ninety (90) days prior to ceasing operations:
   1. Written notification of the cessation of operations, including the date of cessation and the number of pending external reviews with corresponding assignment dates; and
   2. A written action plan for ceasing operations, which shall be approved by the department and include:
      a. The projected date for rendering a decision for each external review which has not been acted upon; and
      b. The projected date of submission of the Data Reporting Requirements for Independent Review Entity, HIPMC-IRE-4 (7/00).
(2) Upon receipt of a written notification as required in subsection (1) of this section, the department shall review and act upon the action plan of the independent review entity.
(3) Upon approval of an action plan to cease operations by the department, the independent review entity shall send written notification to insurers of the date of cessation.
(4) Annual reports required pursuant to Section 10(1) of this administrative regulation shall be submitted to the department by an independent review entity prior to ceasing operations.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Application for Certification of an Independent Review Entity, HIPMC-IRE-1 (11/00);
(b) Assignment of Independent Review Entity Form, HIPMC-IRE-2 (11/00);
(c) External Review Decision Notification Form, HIPMC-IRE-3 (11/00);
(d) Data Reporting Requirements for Independent Review Entities, HIPMC-IRE-4 (7/00);
(e) Annual Independent Review Entity Report Form, HIPMC-IRE-5 (7/00); and
(f) Annual Internal Appeal and External Review Form, HIPMC-ER-1 (11/00).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 14, 2000 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 2000, at 1 p.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 2000, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Charlotte K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, ext. 293, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Charlotte K. Hummel
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external reviews of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.
(b) The necessity of this administrative regulation: KRS 304.17A-629 requires the department to promulgate administrative regulations regarding the independent external review program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external reviews of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external reviews of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of a covered person.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable.
(b) The necessity of the amendment to this administrative regulation: Not applicable.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.
(d) How the amendment will assist in the effective administration of the statutes: Not applicable.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all insurers licensed to engage in health insurance activities in the state of Kentucky and independent review entities. Currently, there are 60 health insurers authorized by the department to engage in health insurance activities in this state, and an unknown number of independent review entities.
(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: First year following implementation: This administrative regulation establishes insurer requirements, procedures for the certification of independent review entities, and the process for initiating and conducting external review of utilization review decisions. It also establishes disclosure requirements of the external review process to be included in the health benefit plan issued at enrollment of the covered person. The department anticipates that there will be costs of compliance for the insurers. The insurers are required to pay for the external reviews and report to the department concerning external reviews. The insurers and independent review entities will be responsible for copying and delivery costs. However, the department also anticipates that insurers may save costs in the long run as medical necessity and coverage issues are more likely to be resolved at the external review level instead of through the civil litigation process.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The department anticipates both direct and indirect costs on the administrative body as a result of this administrative regulation. The department will have additional costs in the amount of $87,000 as a result of employing additional staff, collecting and receiving external review filing information and handling complaints. Fees are established to help offset some of the administrative costs.
(b) On a continuing basis: The department anticipates additional costs in the amount of $79,000 in the second year and thereafter. The department anticipates that costs will be somewhat less the second year and thereafter at the start-up costs will have been absorbed in the first year.
(8) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget for the Department of Insurance will be used to implement and enforce this administrative regulation. Fees are established to offset some of the administrative costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees are established to absorb some of the costs of administering this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. Fees are established to absorb some of the costs of administering this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all health insurers authorized to engage in health insurance and all independent review agencies in the state of Kentucky.

CABINET FOR PUBLIC PROTECTION AND REGULATION
Department of Insurance
Division of Health Insurance Policy and Managed Care
(New Administrative Regulation)

806 KAR 17:300. Provider agreement and risk-sharing agreement filing requirements.

RELATES TO: KRS 304.17A-527
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-527(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the commissioner may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-527(1), requires that the department promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements. This administrative regulation establishes those requirements.

Section 1. Definitions. (1) "Provider agreement" means a contract between a managed care plan and a provider for the provision of health care services.

(2) "Risk-sharing arrangement" is defined in KRS 304.17A-500(13).

(3) "Subcontract agreement" means a contract for the provision of health care services to an enrollee between:
(a) A provider who is a participating provider with a managed care plan and a provider who is not a participating provider with a managed care plan; or
(b) A risk-sharing entity as referenced in KRS 304.17A-500(13) and a provider.

Section 2. Filing Requirements. (1) A sample copy of the following shall be filed with the commissioner at least sixty (60) days before its intended use:
(a) Provider agreement;
(b) Risk-sharing arrangement agreement; and
(c) Subcontract agreement.

(2) A filing shall include:
(a) A compensation arrangement; and
(b) Any attachment, exhibit, or addendum to the items listed in subsection (1) of this section.

(3) A filing submitted to the commissioner shall include the following:
(a) A completed and signed Face Sheet and Verification Form HIPMC-F1, incorporated by reference in this administrative regulation; and
(b) A filing fee as follows:
1. Twenty-five (25) dollars for a provider agreement or subcontract agreement; or
2. Fifty (50) dollars for a risk-sharing arrangement agreement.

(4) A filing required pursuant to subsection (1) of this section shall:
(a) Not be considered complete until all information required by this administrative regulation is received by the Department of Insurance; and
(b) Be disapproved if a complete filing is not received within sixty (60) days of the date of filing.

(5) If a managed care plan amends an existing provider agreement or subcontract agreement that was previously filed with the commissioner, affecting any requirements of this administrative regulation, the managed care plan shall submit:
(a) An amended filing at least sixty (60) days before its intended use; and
(b) A letter that identifies and explains each amendment.

(6) The failure of a managed care plan to file a sample copy of a provider agreement or subcontract agreement, as required by subsections (1) and (5) of this section, may result in imposition of a civil penalty in accordance with KRS 304.99.

(7) If an insurer amends an existing risk-sharing arrangement agreement or subcontract agreement that was previously filed with the commissioner, affecting any requirements of this administrative regulation, the insurer shall submit:
(a) An amended filing at least sixty (60) days before its intended use; and
(b) A letter that identifies and explains each amendment.

(8) The failure of an insurer to file a sample copy of a risk-sharing arrangement or subcontract agreement, as required by subsections (1) and (7) of this section, may result in imposition of a civil penalty in accordance with KRS 304.99.

Section 3. Provider Agreement Requirements. A sample copy of a provider agreement filed with the commissioner shall:
(1) Comply with the requirements of KRS 304.17A-527(1);
(2) Comply with the requirements of KRS 304.17A-728;
(3) Be governed by Kentucky law; and
(4) Not include the following provisions:
(a) A most-favored nation provision in accordance with KRS 304.17A-560;
(b) A limitation on disclosure provision in accordance with KRS 304.17 A-530;
(c) A condition of participation provision in accordance with KRS 304.17A-150(4); or
(d) A mandatory use of hospitalist provision in accordance with KRS 304.17A-532(2).

Section 4. Subcontract Agreement Requirements. A sample copy of a subcontract agreement that is part of a provider agreement or risk-sharing arrangement shall:
(1) Be filed with the commissioner by the managed care plan or insurer in conjunction with the provider agreement or risk-sharing arrangement; and
(2) Meet the requirements of Section 3(1) of this administrative regulation.

Section 5. Risk-sharing Arrangement Requirements. A sample copy of a risk-sharing arrangement filing shall:
(1) Meet the requirements of Section 3(1) of this administrative regulation;
(2) Include a Risk Sharing Arrangement Information Sheet HIPMC-R1, incorporated by reference in this administrative regulation; and
(3) Have an annual Risk-sharing Arrangement Information Sheet HIPMC-R1 filed before September 1 of each calendar year.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Face Sheet and Verification Form HIPMC-F1, incorporated by reference in this administrative regulation; and
(b) Risk-sharing Arrangement Information Sheet HIPMC-R1, incorporated by reference in this administrative regulation; and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner
RONALD B. MCCLOUD, Secretary
APPROVED BY AGENCY: November 14, 2000
VOLUME 27, NUMBER 6 – DECEMBER 1, 2000

FILED WITH LRC: November 14, 2000 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000, at 11 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 2000, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Charlotte K. Hummel, Counsel, Kentucky Department of Insurance, 215 West Main Street, PO Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, ext. 293, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Charlotte K. Hummel, Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements regarding the manner and form of required filings of sample copies of provider agreements.
(b) The necessity of this administrative regulation: KRS 304.17A-527(1) requires that the department promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes the requirements regarding the manner and form of required filings of sample copies of provider agreements, as required by KRS 304.17A-527(1).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation establishes the requirements regarding the manner and form of required filings of sample copies of provider agreements, as required by KRS 304.17A-527(1).
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Not applicable.
(b) The necessity of the amendment to this administrative regulation: Not applicable.
(c) How the amendment conforms to the content of the authorizing statute: Not applicable.
(d) How the amendment will assist in the effective administration of the statute: Not applicable.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all managed care plans licensed to engage in managed care activities in the state of Kentucky. Currently, there are 13 managed care plans authorized by the department to engage in managed care activities in this state.
(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: First year following implementation: KRS 304.17A-527(1) requires that the department promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements. This administrative regulation establishes those requirements. Because filings do require a fee, the department anticipates there will be some cost on all managed care plans, which will vary depending on the number of filings.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The department anticipates some additional costs in personnel time in the administration of this regulation. The department anticipates that the costs will be absorbed within the resources available to the department.
(b) On a continuing basis: Same as in the first year.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 304.17A-527(1) requires that the department promulgate administrative regulations regarding the manner and form of required filings of sample copies of provider agreements. This administrative regulation establishes those requirements. The filings do require a fee of $25 for a provider agreement or subcontract agreement and $50 for a risk-sharing arrangement.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes
(9) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all managed care plans authorized to engage in managed care activities in the state of Kentucky.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(New Administrative Regulation)

308 KAR 9:010. Books and records to ensure that check cashers do not violate the law against multiple transactions in excessive amounts by a customer.

RELATES TO: KRS 368.100(1), (10)
STATUTORY AUTHORITY: KRS 368.075, 368.090(1), 368.100(1), 368.110(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: The Department of Financial Institutions is empowered by KRS Chapter 368 to enforce that act. This administrative regulation will require licensees to adopt a method to detect and prevent instances where customers enter into an unlawful number of transactions in an excessive total amount permitted by statute by doing business at several branches of the licensee. The administrative regulation is necessary because, presently, no administrative regulation is in place to address this matter.

Section 1. As a part of their books and records requirements, licensees shall institute and maintain an accounting system that is calculated and designed to reasonably assure that no customer enters into multiple transactions with the licensee in violation of KRS 368.100(10) by doing business with the licensee at more than one (1) location of the licensee. The system shall be designed in such a way and generate reports in such a fashion so as to readily permit examination and verification of compliance with KRS 368.100(10) by department examiners. All licensees shall achieve compliance with this administrative regulation within sixty (60) days of the effective date of this administrative regulation. New licensees, and existing licensees applying for additional locations, applying for license after the expiration of this sixty (60) day period shall have the ability to immediately comply with this administrative regulation at the time of their application. Records required to be maintained pursuant to this administrative regulation shall be kept for a reasonable period of time but in no event less than two (2) years from the date of any transaction. In the event that any licensee fails to develop or maintain such this system, its license pursuant to KRS Chapter 368 to do business in the Commonwealth may be suspended or revoked for all locations.

RONALD B. MCCLOUD, Secretary
ELLA B. ROBINSON, Commissioner
WILLIAM E. DOYLE, Staff Attorney
APPROVED BY AGENCY November 15, 2000

FILED WITH LRC: November 15, 2000 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, December 21, 2000, at 10 a.m. at the offices of the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in
attending this hearing shall notify this agency in writing by Thursday, December 14, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by Thursday, December 21, 2000. Send written notification to attend the public hearing or comments on this administrative regulation to: Department of Financial Institutions, Public Protection and Regulation Cabinet, Attn: William E. Doyle, Staff Attorney, 1025 Capitol Center Drive, Suite 200, Frankfort, Kentucky 40601, Phone: (502) 573-3390, Facsimile: (502) 573-8797.

REGULATORY IMPACT ANALYSIS

Contact Person: William E. Doyle

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation will require licensees to adopt a method to detect and prevent instances where customers enter into an unlawful number of transactions in an excessive total amount permitted by statute by doing business at several branches of the licensee.
(b) The necessity of this administrative regulation: This regulation is necessary because, presently no regulation is in place to address this matter. The statute (KRS Chapter 368) establishes a limit as to how much a person may have outstanding at 1 time to a check cashier. Presently, a customer can get around that legal ceiling by issuing checks at several locations (branches) of 1 check cashier. Check cashers (licensees) must be compelled to devise a system to prevent this kind of violation and this regulation is designed to compel them to do just that.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes mandate that a check cashier (licensee) not accept more that a certain amount of checks from any 1 customer. This regulation requires the licensee to develop procedures to accomplish that statutory charge. As such, it is within the purview of the statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will allow licensees to prevent themselves form inadvertently violating the provision of the check cashing statute that prevents them from accepting excessive amounts of checks from any 1 customer. It will also, as a side benefit, reduce their losses from customers who fail to honor their checks at the time for such honoring.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This section is not applicable.
(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: All check cashers that need to be licensed, now existing, and those persons or entities contemplating entering the business.
(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: Licensees will be required to develop a system, reasonable under their circumstances, to prevent customers from exceeding their statutory limit in checks issued. Most licensees should already have such a system and will be unaffected. Smaller licensees do not need a very elaborate system, as they will likely not have branches. The impact should be minimal.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially:
(b) On a continuing basis:
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will be implemented using funds already available to the department derived from its licensees and budget.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or, by the change if it is an amendment: This administrative regulation will be implemented using funds already available to the department derived from its licensees and budget. There will be no increase in funding needed and no increased cost to the licensees.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None. This administrative regulation will be implemented using funds already available to the department derived from its licensees and budget. There will be no increase in funding needed and no increased cost to the licensees.
(9) TIERING: Is tiering applied? Tiering does not apply. The standards of compliance with the law must apply uniformly to all licensed check cashers to ensure fairness and to maintain the necessary level of protection for the public.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(New Administrative Regulation)


RELATES TO: KRS 368.090(1), (2)
STATUTORY AUTHORITY: KRS 368.090(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: To reasonably assure compliance with KRS 368.010 to 368.120, examinations of licensees will be conducted, pursuant to this administrative regulation and the costs of the examination will be billed to licensees as authorized by KRS Chapter 368. In accordance with the chapter, this administrative regulation is being enacted to provide for billing for examinations.

Section 1. The department shall examine the business, books, and records of all licensees to assure compliance with KRS 368.010 to 368.120 on a regular cycle to the extent practicable. In addition, the department shall examine the business, books, and records of a licensee whenever the department has reasonable cause to believe that a violation of any of these provisions may have occurred or be about to occur, notwithstanding the cycle. Reasonable cause shall exist when the department is in receipt of a written complaint against the subject licensee to the effect that any provision in KRS 368.010 to 368.120 is being violated or about to be violated or when any department employee observes conduct or other evidence that a violation of any provision in KRS 368.010 to 368.120 may have occurred or be about to occur.

Section 2. All licensees shall pay an examination fee to cover the cost of the examination based on fair compensation for time and actual expense for any examinations of licensees conducted by department examiners.

Section 3. In the event that any licensee fails to pay fees imposed by this administrative regulation, after being billed for the examination fee and after having been afforded a reasonable time in which to pay, not exceeding thirty (30) days from the date of receipt of a notice of failure to pay the examination fee and demand for immediate payment, its license pursuant to KRS Chapter 368 to do business in the Commonwealth may be suspended or revoked for all locations. The notice of failure to pay the examination fee and demand for immediate payment may be sent by the department at any time after thirty (30) days have elapsed since the license was billed for the examination fee. The date for measuring the date of billing shall be the date the bill was deposited in the mailroom at the department for delivery through the United States Mail. Revocation or suspension of a license under
this administrative regulation shall not extinguish the licensee's liability for any amounts owing for one (1) or several examinations.

RONALD B. MCCLOUD, Secretary
ELLA B. ROBINSON, Commissioner
WILLIAM E. DOYLE, Staff Attorney

APPROVED BY AGENCY: November 15, 2000
FILED WITH LRC: November 15, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, December 21, 2000, at 10 a.m. at the offices of the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, December 14, 2000, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by Thursday, December 21, 2000. Send written notification to attend the public hearing or comment on this administrative regulation to: Department of Financial Institutions, Public Protection and Regulation Cabinet, Attn: William E. Doyle, Staff Attorney, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Phone: (502) 573-3390, Facsimile: (502) 573-8787.

REGULATORY IMPACT ANALYSIS

Contact Person: William E. Doyle

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation will provide for billing for examinations as authorized in KRS Chapter 368.
(b) The necessity of this administrative regulation: This regulation is necessary because, presently there is no regulation in place to address the matter of billing for examinations.
(c) How this administrative regulation conforms to the content of the authorizing statutes: Billing for examinations is authorized in KRS Chapter 368.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will provide for billing for examinations as authorized in KRS Chapter 368.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of: This section is not applicable.
(f) How the amendment will change this existing administrative regulation:
(a) The necessity of the amendment to this administrative regulation:
(b) how the amendment conforms to the content of the authorizing statutes:
(c) How the amendment assists in the effective administration of the statutes:
(d) How the amendment will impact the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All check cashers that need to be licensed, now existing, and those persons or entities contemplating entering the business.
(g) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be no impact. Licensees are currently billed for examinations.
(h) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially:
(b) On a continuing basis:
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation is a source of revenue. This administrative regulation will be implemented using funds already available to the department derived from its licensees and budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will be implemented using funds already available to the department derived from its licensees and budget. There will be no increase in funding needed and no increased cost to the licensees. They will continue to be billed at the same rate.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation codifies existing practice. As such it does not establish new fees or increase existing fees. This administrative regulation will be implemented using funds already available to the department derived from its licensees and budget. There will be no increase in funding needed and no increased cost to the licensees. They will continue to be billed at the same rate.
(9) TIERING: Is tiering applied? Tiering does not apply. The standards of compliance with the law must apply uniformly to all check cashers to ensure fairness and to maintain the necessary level of protection for the public.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions

(808 KAR 9:030. KRS Chapter 368, Administrative hearing procedures.

RELATES TO: KRS Chapter 13B, 368.090, 368.110, 368.120
STATUTORY AUTHORITY: KRS 368.090(1), 368.110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 368.110 authorizes the commissioner to order the revocation of a license of any licensee under KRS Chapter 368 for a violation of KRS Chapter 368 or any order or administrative regulation thereunder. KRS 368.120 and due process of law require that an administrative hearing be conducted in accordance with KRS Chapters 13B and 368 prior to taking any action to revoke a license. KRS 368.090(1) authorizes the commissioner of the department to promulgate administrative regulations to enforce the provisions of KRS Chapter 368. This administrative regulation establishes supplemental administrative hearing procedures for matters relating to licensees under KRS Chapter 368.

Section 1. Definitions. (1) "Administrative hearing" is defined by KRS 13B.010(2).
(2) "Commissioner" means the Commissioner of the Department of Financial Institutions.
(3) "Department" means the Department of Financial Institutions.
(4) "Hearing officer" is defined by KRS 13B.010(7).
(5) "Party" is defined by KRS 13B.010(3).
(6) "Person" means an individual, a limited liability company, a corporation, a partnership, a registered limited liability partnership, a limited partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a political subdivision of a government, and includes but is not limited to a licensee under KRS Chapter 368.

Section 2. Complaint and Answer. (1) The department attorney may file a written complaint against a person if:
(a) The attorney believes that the person is violating or has violated a provision of KRS Chapter 368; and
(b) The commissioner has not entered an order against the person based on the same conduct or allegation.
(2) The complaint shall:
(a) Describe the allegations made against the person;
(b) Request the commissioner to enter an appropriate order; and
(c) Comply with the requirements for notice of an administrative hearing established by KRS 13B.050(6) through (8).
(3) A person shall respond to the complaint by filing a written answer with the department. If an answer is not filed in accordance with subsection (4) of this section, the department attorney shall seek a final order from the commissioner granting the relief requested in the complaint.
(4) An answer shall:
(a) Be filed within twenty (20) days of service of the complaint;
(b) Respond to each allegation in the complaint; and
(c) Include a request for an administrative hearing if the person:
1. Does not agree that there has been a violation of KRS Chapter 368; or
2. Believes that the requested action is not appropriate.
(5) If requested, an administrative hearing shall be held pursuant to the provisions of KRS Chapter 138 and this administrative regulation. The notice of hearing required by KRS 138.050 shall be sent to the parties after the request for an administrative hearing has been received.

Section 3. Attorney Representation. (1) An attorney who represents a party shall send written notification to the department, the hearing officer, and each party stating:
(a) That the attorney is representing the party; and
(b) The name, address, telephone number, and, if applicable, the facsimile number of the attorney and the client.
(2) If there is a change in the information provided in the notice, the attorney shall send written notification of the change to the department, the hearing officer, and each party.
(3) Withdrawal. An attorney who wishes to withdraw shall submit written notification stating that:
(a) The attorney is withdrawing;
(b) The client has been informed of the withdrawal; and
(c) The withdrawal is authorized by the rules of the Kentucky Supreme Court.

Section 4. Hearing Officers. If a hearing officer is disqualified, the commissioner shall assign another hearing officer within ten (10) days of the disqualification.

Section 5. Filings. (1) Each document filed with the department for an administrative hearing shall include a certificate of service. The certificate of service shall:
(a) Certify that the document was served as required by KRS 138.080(2);
(b) Identify the method of service; and
(c) Be signed by the individual who served the document.
(2) Pursuant to KRS 138.080(2), a document sent by facsimile machine shall be considered served on a party on the date of the facsimile transmission if the:
(a) Document contains a statement that the:
1. Document was served by facsimile machine; and
2. Original of the document will be mailed to each party within five (5) business days of the date the facsimile was sent; and
(b) Party mails the original to the department within five (5) business days of the date the facsimile was sent.

Section 6. Motions. (1) A request for a hearing officer to take or refrain from taking an action shall be made by an oral or written motion.
(2) A motion shall state the basis for the motion, including a citation to or description of the legal authority in support of the requested action, if applicable.
(3) A party shall be given an opportunity to respond to a motion.

Section 7. Consolidation and Severance. (1) A hearing officer may consolidated cases assigned to his docket upon a finding by the hearing officer that:
(a) There are:
1. Common questions of law or fact; or
2. Identical issues or witnesses; and
(b) Consolidation is appropriate.
(2) A hearing officer may sever consolidated cases or claims in an administrative action upon a finding that the requirements for consolidation established in subsection (1) of this section are not met.

RONALD B. MCCLOUD, Secretary
ELLA B. ROBINSON, Commissioner
WILLIAM E. DOYLE, Staff Attorney
APPROVED BY AGENCY: November 15, 2000
spondent to bring such contested matters to the ultimate decision maker (the commissioner) for resolution when settlement attempts fail.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This section is not applicable.

(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: All mortgage loan companies and brokers that need to be licensed, now existing, and those persons or entities contemplating entering the business.

(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: Licensees brought before the Department of Financial Institutions for disciplinary matters will have a greater opportunity to settle the matter without having a negative order entered against them. Those who have no desire to settle will not be compelled to do so and will not suffer any negative repercussions from their failure to settle. Contested matters will proceed virtually the same as now with adherence to KRS Chapter 13B.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially;
(b) On a continuing basis;
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will be implemented using funds already available to the department derived from its licensees and budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will be implemented using funds already available to the department derived from its licensees and budget. There will be no increase in funding needed and no increased cost to the licensees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None. This administrative regulation will be implemented using funds already available to the department derived from its licensees and budget. There will be no increase in funding needed and no increased cost to the licensees.

(9) TIERING: Is tiering applied? Tiering does not apply. The standards of compliance with the law must apply uniformly to all licensed mortgage loan companies and mortgage loan brokers to ensure fairness and to maintain the necessary level of protection for the public.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(New Administrative Regulation)

808 KAR 12:030. KRS Chapter 294, Administrative hearing procedures.

RELATES TO: KRS Chapter 13B, 294.012, 294.140(1), 294.190
STATUTORY AUTHORITY: KRS 294.012, 294.140(1), 294.190
NECESSITY, FUNCTION, AND CONFORMITY: KRS 294.090 authorizes the commissioner to order the denial, suspension, or revocation of a license of any mortgage loan broker or mortgage loan company for a violation of KRS Chapter 294 or any order or administrative regulation thereunder. KRS 294.190 authorizes the commissioner to take certain other actions, including the entry of an order to cease and desist from certain acts or practices when a mortgage loan broker or mortgage loan company violates or is about to violate KRS Chapter 294 or any order or administrative regulation thereunder. KRS 294.012 and due process of law require that an administrative hearing be conducted in accordance with KRS Chapters 13B and 294 prior to taking any action except in certain emergency situations. KR

294.140(1) authorizes the commissioner of the department to promulgate administrative regulations to implement the provisions of KRS Chapter 294. This administrative regulation establishes supplemental administrative hearing procedures for matters relating to a mortgage loan broker or mortgage loan company.

Section 1. Definitions. (1) "Administrative hearing" is defined by KRS 13B.010(2).
(2) "Commissioner" means the Commissioner of the Department of Financial Institutions.
(3) "Department" means the Department of Financial Institutions.
(4) "Hearing officer" is defined by KRS 13B.010(7).
(5) "Party" is defined by KRS 13B.010(3).
(6) "Person" means an individual, a limited liability company, a corporation, a partnership, a registered limited liability partnership, a limited partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a political subdivision of a government, and includes but is not limited to a licensee under KRS Chapter 294.

Section 2. Complaint and Answer. (1) The department attorney may file a written complaint against a person if:
(a) The attorney believes that the person is violating or has violated a provision of KRS Chapter 294; and
(b) The commissioner has not entered an order against the person based on the same conduct or allegation.
(2) The complaint shall:
(a) Describe the allegation made against the person;
(b) Request the commissioner to enter an appropriate order; and
(c) Comply with the requirements for notice of an administrative hearing established by KRS 13B.050(c) through (h).
(3) A person shall respond to the complaint by filing a written answer with the department. If an answer is not filed in accordance with subsection (4) of this section, the department attorney shall seek a final order from the commissioner granting the relief requested in the complaint.
(4) An answer shall:
(a) Be filed within twenty (20) days of service of the complaint;
(b) Respond to each allegation in the complaint; and
(c) Include a request for an administrative hearing if the person:
1. Does not agree that there has been a violation of KRS Chapter 294; or
2. Believes that the requested action is not appropriate.
(5) If requested, an administrative hearing shall be held pursuant to the provisions of KRS Chapter 13B and this administrative regulation. The notice of hearing required by KRS 13B.050 shall be sent to the parties after the request for an administrative hearing has been received.

Section 3. Attorney Representation. (1) An attorney who represents a party shall send written notification to the department, the hearing officer, and each party stating:
(a) That the attorney is representing the party; and
(b) The name, address, telephone number, and, if applicable, the facsimile number of the attorney and the client.
(2) If there is a change in the information provided in the notice, the attorney shall send written notification of the change to the department, the hearing officer, and each party.
(3) Withdrawal. An attorney who wishes to withdraw shall submit written notification stating that:
(a) The attorney is withdrawing;
(b) The client has been informed of the withdrawal; and
(c) The withdrawal is authorized by the rules of the Kentucky Supreme Court.

Section 4. Hearing Officers. If a hearing officer is disqualified, the commissioner shall assign another hearing officer within ten (10) days of the disqualification.

Section 5. Filings. (1) Each document filed with the department for an administrative hearing shall include a certificate of service. The certificate of service shall:
(a) Certify that the document was served as required by KRS 13B.080(2); (b) Identify the method of service; and (c) Be signed by the individual who served the document.

(2) Pursuant to KRS 13B.080(2), a document sent by facsimile machine shall be considered served on a party on the date of the facsimile transmission if the:

(a) Document contains a statement that the:

1. Document was served by facsimile machine; and

2. Original of the document will be mailed to each party within five (5) business days of the date the facsimile was sent; and

(b) Party mails the original to the department within five (5) business days of the date the facsimile was sent.

Section 6. Motions. (1) A request for a hearing officer to take or refrain from taking an action shall be made by an oral or written motion.

(2) A motion shall state the basis for the motion, including a citation to or description of the legal authority on which the requested action, if applicable.

(3) A party shall be given an opportunity to respond to a motion.

Section 7. Consolidation and Severance. (1) A hearing officer may consolidate cases assigned to his docket upon a finding by the hearing officer that:

(a) There are:

1. Common questions of law or fact; or

2. Identical issues or witnesses; and

(b) Consolidation is appropriate.

(2) A hearing officer may sever consolidated cases or claims in an administrative action upon a finding that the requirements for consolidation established in subsection (1) of this section are not met.

RONALD B. MCCLOUD, Secretary.
ELLA B. ROBINSON, Commissioner.
WILLIAM E. DOYLE, Staff Attorney.
APPROVED BY AGENCY: November 15, 2000.
FILED WITH LRC: November 15, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, December 21, 2000, at 10 a.m. at the offices of the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, December 14, 2000, five (5) workdays prior to the hearing, of their intent to attend. No notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided with reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by Thursday, December 21, 2000. Send written notification to attend the public hearing or comments on this administrative regulation to: Department of Financial Institutions, Public Protection and Regulation Cabinet, Attn: William E. Doyle, Staff Attorney, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Phone: (502) 573-3390, Facsimile: (502) 573-6787.

REGULATORY IMPACT ANALYSIS

Contact Person: William E. Doyle.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes a procedure for disciplinary type actions (license suspension or revocation/implosion of fines) that requires a staff attorney to file an administrative complaint to begin proceedings in much the same way as an attorney would file a civil complaint in a court of law to begin a civil action. It formalizes the process and isolates the final decision maker (the commissioner) from proceedings at preliminary phases. It is similar to the practice in most of the states.

(b) The necessity of this administrative regulation: This regulation is necessary because under the present system the commissioner must issue a show cause order and that procedure makes it impossible to isolate the commissioner from the process at the early phases. While it is not unconstitutional or unlawful for the commissioner to be directly involved at such an early phase, the procedure established by the administrative regulation (administrative complaint) affords the respondent more fair treatment and it also facilitates settlements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Under present practice, a show cause order is issued to begin proceedings and then they proceed pursuant to the requirements of KRS Chapter 13B. This is permissible under present statutes. The new procedure allows an attorney to petition the commissioner for relief (through the administrative complaint) and then the matter proceeds in accordance with KRS Chapter 13B. The major difference is that under the new procedure in this regulation, the staff attorney would not approach the commissioner ex parte and request that the commissioner issue a show cause order. That "approaching" of the commissioner is done through the filing of a written petition or administrative complaint for relief and the respondent is afforded an opportunity to respond to a written petition or administrative complaint in writing. Since the new procedure does not expand the authorized procedure under present law, it conforms to the present law (the authorizing statutes). Substantively, the major change is that the process of seeking relief from the commissioner is reduced to writing and contemporaneously served upon the respondent.

(2) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will allow more of an opportunity for respondents (licensees) to settle disciplinary matters with the department without the involvement of the commissioner. Matters that can be resolved will be resolved without the entry of a disciplinary type order from the commissioner and this will allow a cleaner record for the respondent when matters are settled. The old show cause order will never have been entered when a matter is amicably resolved before the commissioner and the respondent. However, it will provide for the orderly resolution of matters that cannot be settled with the staff by the respondents and it will allow the respondent to bring such contested matters to the ultimate decision maker (the commissioner) for resolution when settlement attempts fail.

(3) If this is an amendment to an existing administrative regulation, provide a brief summary of: This section is not applicable.

(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: All mortgage loan companies and brokers that need to be licensed, now existing, and those persons or entities contemplating entering the business.

(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: Licensees brought before the Department of Financial Institutions for disciplinary matters will have a greater opportunity to settle the matter without having a negative order entered against them. Those who have no desire to settle will not be compelled to do so and will not suffer any negative repercussions from their failure to settle. Contested matters will proceed virtually the same as now with adherence to KRS Chapter 13B.

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

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will be implemented using funds already available to the department derived from its licensees and budget.
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(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will be implemented using funds already available to the department derived from its licensees and budget. There will be no increase in funding needed and no increased cost to the licensees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None. This administrative regulation will be implemented using funds already available to the department derived from its licensees and budget. There will be no increase in funding needed and no increased cost to the licensees.

(9) TIERING: Is tiering applied? Tiering does not apply. The standards of compliance with the law must apply uniformly to all licensed mortgage loan companies and mortgage loan brokers to ensure fairness and to maintain the necessary level of protection for the public.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Physical Health
(New Administrative Regulation)

907 KAR 3:130. Medical necessity.

RELATES TO: KRS 205.520, 42 CFR 440.230, 441 Subpart B, 42 USC 1396d(r)

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.560, 42 USC 1396a, b, d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 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. This administrative regulation establishes the basis for the determination of the medical necessity of benefits and services for which payment shall be made by the Medicaid Program on behalf of both the categorically and the medically needy.

Section 1. Definitions. (1) "Covered benefit" or "covered service" means a health care service or item for which the department shall reimburse in accordance with state and federal regulations.

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

(3) "Medically necessary" or "medical necessity" means a covered benefit is:

(a) Reasonable and required to identify, diagnose, treat, correct, cure, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(b) Clinically appropriate in terms of the service, amount, scope, and duration based on generally-accepted standards of good medical practice;

(c) Provided for medical reasons rather than primarily for the convenience of the individual, the individual's caregiver, or the health care provider, or for cosmetic reasons;

(d) Provided in the most appropriate location, with regard to generally-accepted standards of good medical practice, where the service may be safely and effectively provided;

(e) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard;

(f) Provided in accordance with early and periodic screening, diagnosis, and treatment (EPSDT) requirements established in 42 USC 1396d(r) and 42 CFR Part 441 Subpart B for individuals under twenty-one (21) years of age; and

(g) Provided in accordance with 42 CFR 440.230.

(4) "Prudent layperson standard" means the standard for determining the existence of an emergency medical condition wherein a prudent layperson who possesses an average knowledge of health and medicine determines that a medical condition manifests itself by acute symptoms of sufficient severity (including severe pain) such that the person could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

Section 2. Medical Necessity Determination. (1) The determination of whether a covered benefit or service is medically necessary shall:

(a) Be based on an individualized assessment of the recipient's medical needs; and

(b) Comply with the definition of medically necessary established in Section 1(3) of this administrative regulation.

(2) The department shall have the final authority to determine the medical necessity of a covered benefit or service and shall ensure the right of a recipient to appeal a negative action in accordance with 907 KAR 1:563.

DENNIS BOYD, Commissioner
JIMMY D. HELTON, Secretary
APPROVED BY AGENCY: November 14, 2000
FILED WITH LRC: November 15, 2000 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 2000 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 December 14, 2000, 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. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: JILL LEWIS, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counselor, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Karen Doyle or Sharon Rodriguez

(1) Provide a brief summary of:

(a) What this administrative regulation does: this administrative regulation establishes the basis for determining the medical necessity of benefits and services for which the Department for Medicaid Services (DMS) shall make payment on behalf of the categorically and medically needy.

(b) The necessity of this administrative regulation: this administrative regulation is being promulgated in order to establish the basis for determining the medical necessity of benefits and services for which DMS shall make payment on behalf of the categorically and medically needy.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.560 grants to the Cabinet for Health Services authority to establish medical scope of care and this administrative regulation conforms with KRS 205.560 by establishing the basis for determining the medical necessity of benefits and services for which DMS shall make payment on behalf of the categorically and medically needy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 205.560 by clearly establishing the basis for determining the medical necessity of benefits and services for which DMS shall make payment on behalf of the categorically and medically needy.

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

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

(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes:
(3) List the type and number of individuals, businesses, organiza-
tions, or state and local government affected by this administrative regulation: Medicaid providers are affected in that the basis for de-
termining the medical necessity of benefits and services for which DMS shall make payment will be clearly established for them.
(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: the above groups will only be impacted in that a basis, to which they can refer, for de-
termining the medical necessity of benefits and services for which DMS shall make payment will be clearly established.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the imple-
dmentation and enforcement of this administrative regulation: No fund-
ing 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 of it is an amendment: No fees or funding are required.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not estab-
lish or increase any fees.
(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regula-
tion 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.
The November meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 14, 2000 at 10 a.m. in Room 149 of the Capitol Annex. Representative John Arnold, Chair man, called the meeting to order, and the roll call was taken. The minutes of the October 10, 2000 meeting were approved.

Present were:

**Members:** Representative John Arnold, Chairman; Senators Joe Pendleton and Marshall Long; Representatives Woody Allen, James Bruce, and Jimmie Lee.

**RC Staff:** Dave Nicholas, Donna Little, Edna Lowery, Susan Wunderlich, Angela Phillips, Ellen Steinberg, Ellen Benzinger.

**Guests:** Richard Casey, Linda Renschler, KHEAA; Robert Barnes, Kentucky Teachers' Retirement; Pam Johnson, William P. Hanes, Kentucky Retirement Systems; Nathan Goldman, Sharon Weisenbeck, Board of Nursing; Becky Klasch, Debra Turner, Nancy Brinly, Board of Physical Therapy; Tom Bennett, Pete Pfeiffer, Roy Grimes, Department of Fish and Wildlife Resources; Amy Barker, Dr. Gary Dennis, Sex Offender Risk Assessment Board; Tamela Bings, Barbara Priestley; Department of Corrections; Thor Morrison, Stephanie Bingham, Steve Lynn, Kentucky Law Enforcement Council; Jeff Mosley, Geri Grgsby, Margaret Plattner, Transportation Cabinet; Mary Ellen Wiedenohl, Education Professional Standards Board; Donna Floyd, Department of Workers' Claims; Deborah Eversole, Public Service Commission; Gary Kupchinsky, Charles Kendall, Philip Krenzer, Lynne Flynn, Trish Howard, Bernard A. Elmer, Peggy Cook, Betty Conner, Jerry Whitley, Cabinet for Health Services; Joyce Metts, Clifford Jennings, Stephanie Bamber-Barnes, Shirley Eldridge, Rosanne Barkley, Marilyn Bannister, Karen Doyle, Cabinet for Families and Children; Reva Williams, Active Services Corp; Nancy Galvagni, Kentucky Hospital Association; Joel Anderson, Kentucky Assisted Living Facilities Association; Robert Stevens, St. Charles Care Center; Dianna Mullins, Appalachian Regional Healthcare, Inc.; Matt Klein, Deters, Benzing & LaVelle; Bob Barnett, Mike Mayes, Kentucky Pharmacists Association; Anne Powell, Kentucky Nurses Association; Nancy C. Estes, Sharon Fields, Kentucky Disabilities Coalition; Michael W. Wooden, Wooden & Associates, Inc.; Mike Helton, KPMA.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

**Kentucky Higher Education Assistance Authority: Division of Student Services: Commonwealth Merit Scholarship Program**

11 KAR 15:010. Definitions. Richard Casey, General Counsel, and Linda Renschler, Student Aid Branch Manager, represented the Authority.

In response to a question by Chairman Arnold, Mr. Casey stated that these administrative regulations were amended to change the program name, address housekeeping matters, and conform to other legislative changes made by Senate Bill 125 and House Bill 93, which were enacted during the 2000 Regular Session of the General Assembly.

This administrative regulation was amended as follows: (1) the TITLE was amended to comply with KRS 13A.222(4)(e); and (2) Section 1 was amended to: (a) define "correspondence course" in accordance with the definition established in 11 KAR 5:001; (b) strike-through existing language that was not deleted in accordance with KRS 13A.222(2)(b); and (c) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4).

11 KAR 15:020. Student eligibility report. This administrative regulation was amended as follows: Section 1 was amended to: (1) cross-reference applicable administrative regulations; and (2) comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

11 KAR 15:070. Records and reports. This administrative regulation was amended as follows: Section 1 was amended to comply with the format requirements of KRS 13A.220(4).

105 KAR 1:150. Installment purchase procedures. Pam Johnson, General Manager, and Bill Hanes, Deputy Commissioner, represented the Board.

In response to a question by Chairman Arnold, Ms. Johnson stated that these administrative regulations were amended to conform with statutory changes enacted during the 2000 Regular Session of the General Assembly and feceral changes that had occurred and to simplify procedures for members purchasing service credit through monthly deductions.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 2, 4, 5, 6, and 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

105 KAR 1:180. Death before retirement procedures. This administrative regulation was amended as follows: Sections 4 and 6 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

105 KAR 1:200. Retirement procedures and forms. This administrative regulation was amended as follows: Sections 1 through 8 and 11 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

105 KAR 1:210. Disability procedures. This administrative regulation was amended as follows: Sections 1 through 4, 7 through 12 and 14 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

105 KAR 1:220. Annual disability review. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 1 through 3 and 7 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

105 KAR 1:260. Purchase of out-of-state service credit. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 2, 3, 5, 7, and 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Board of Nursing**

201 KAR 20:215. Contact hours, recordkeeping and reporting requirements for renewal of licensure. Nathan Goldman, General Counsel, and Sharon Weisenbeck, Executive Director, represented the Board.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 3 and 9 were amended to comply with the: (a) format requirements of KRS 13A.220(4) and (b) drafting requirements of KRS 13A.222(4).

**Board of Physical Therapy**

201 KAR 22:130. Per diem of board members. Becky Klasch, Executive Director, Debra Turner, Board member, and Nancy Brinly,
former Director, represented the Board.

In response to a question by Chairman Arnold, Ms. Kusch stated that these administrative regulations were amended to conform to statutory changes enacted during the 2000 Regular Session of the General Assembly. The per diem for board members would be increased from $60 to $75 under this administrative regulation.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f).

201 KAR 22:140. Funding of impaired physical therapy practitioners committee. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Section 1 was amended to indicate when the fee was to be paid.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Fish

301 KAR 1:291. Fishing limits. Tom Bennett, Commissioner, represented the Department.

In response to a question by Chairman Arnold, Mr. Bennett stated this administrative regulation was amended to comply with requirements established in Tennessee for Dale Hollow Lake. Kentucky had a long-standing agreement with Tennessee to have parity on Dale Hollow Lake because 85% of the lake was located in Tennessee and 15% was located in Kentucky.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 were amended to comply with the drafting requirements of KRS 13A.222(4).

Game

301 KAR 2:240. Special bobcat harvest season. In response to a question by Chairman Arnold, Mr. Bennett stated that Kentucky was, and had been for many years, under the quota received from the US Fish and Wildlife Service for bobcats. This administrative regulation was amended to permit each hunter to take three bobcats per year.

In response to questions by Representative Allen, Mr. Bennett stated that research from the Department and the US Fish and Wildlife Service indicated that there were approximately 4000 bobcats in Western Kentucky and 5000 bobcats in Eastern Kentucky. The Department had received reports of bobcats from every Kentucky county. He did not know why people hunted bobcats or the value of their pelts.

In response to a question by Representative Bruce, Mr. Bennett stated that a bobcat was a cat about eighteen inches tall with a short tail. Bobcats resided in ranges across the state and posed a threat mainly to songbirds, not other animals or people.

This administrative regulation was amended as follows: the RELATES TO paragraph was amended to correct statutory citations.

Justice Cabinet: Department of Corrections: Division of Adult Institutions: Office of the Secretary

501 KAR 6:050. Luther Luckett Correctional Complex. Tamela Biggs, Staff Attorney, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to add statutory citations; (2) Section 1 was amended to comply with the format for incorporation by reference, as established in KRS 13A.2251; (3) the REGULATORY IMPACT ANALYSIS was amended to correct an institutional reference; (4) Policy 03-02-04 was amended to: (a) correct numbering; and (b) clarify language; (5) Policy 09-14-02 was amended to correct statutory citations; and (6) Policy 09-29-01 was amended to: (a) notify the coroner as required by statute; and (b) clarify language.

501 KAR 6:060. Northpoint Training Center. This administrative regulation was amended as follows: Section 1 was amended to comply with the format for incorporation by reference, as established in KRS 13A.2251.

501 KAR 6:120. Blackburn Correctional Complex. This administrative regulation was amended as follows: (1) Section 1 was amended to comply with the format for incorporation by reference, as established in KRS 13A.2251; and (2) Policies 02-05-01, 02-06-01, and 11-04-01 were amended to comply with the drafting requirements of KRS 13A.222(4).

501 KAR 6:220 & E. Treatment for sex offenders. Amy Barker, Staff Attorney, Sex Offender Risk Assessment Advisory Board; Dr. Rick Purvis, Director, Division of Mental Health; and Dr. Gary Dennis, Deputy Commissioner and Chairman, Sex Offender Risk Assessment Advisory Board, represented the Department.

In response to a question by Representative Bruce, Ms. Barker stated that this administrative regulation established minimum standards for sex offender treatment.

In response to questions by Representative Bruce, Dr. Purvis stated that when a judge ordered sex offender treatment, the Sex Offender Risk Assessment Advisory Board assured that the individuals who provided the treatment and evaluations had met certain standards. The treatment was provided by the Department and private providers. The evaluations were conducted at the jails prior to sentencing.

In response to questions by Chairman Arnold, Ms. Barker stated that while state law no longer required notification to communities when a sex offender was released, she was not aware of any statutory prohibitions that prevented a sheriff from making the notification.

Dr. Dennis stated that information regarding all released sex offenders was available to the public through the Kentucky State Police website.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to define "community standards of care"; and (4) Sections 1 and 2 were amended to comply with: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

501 KAR 6:999. Corrections secured policies and procedures. Pursuant to KRS 61.815(2) and KRS 61.810(1)(d) and (k), and KRS 197.025(6), the Subcommittee went into closed session to review this administrative regulation.

Death Benefit Claims

501 KAR 15:010. Definitions. Tamela Biggs, Staff Attorney, represented the Department.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; (2) the TITLE and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 was amended to comply with: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

501 KAR 15:020. Filing and processing of death benefit claims. This administrative regulation was amended as follows: Sections 2, 3, and 4 were amended to comply with: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

Transportation Cabinet: Office of Transportation Delivery: Mass Transportation

603 KAR 7080. Human service transportation delivery. Jeff Mossely, Deputy Secretary, Geri Grisby, General Counsel, and Margaret Plattner, Director, represented the Department.

In response to questions by Representative Lee, Ms. Plattner stated that, when a person becomes eligible for Medicaid or K-TAP, the Department for Community-Based Services will give that person a one-page flyer that explains the human service transportation delivery program, including information on the program, its availability, program codes, and a person's right to choose transportation providers. The flyer will include instructions to contact the Transportation Cabinet directly with questions or complaints regarding the program. She would give a copy of the flyer to the Subcommittee as soon as the flyer was complete. The Cabinet would give copies of the flyer to the cabinets involved in the program as soon as this administrative regulation became effective to enable the cabinets to immediately distribute the flyers to the Department for Community-Based Services offices.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph and Sections 1, 5, 7, 8, and 16
were amended to correct statutory citations; (2) Sections 1, 4 through 6, and 8 through 18 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) Section 19 was amended to adopt without change, rather than incorporate by reference, applicable federal regulations.

Education Professional Standards Board

704 KAR 20:198. Director of special education. Mary Ellen Wiederwohl, Director of Legislative and Public Relations, represented the Board.

In response to questions by Chairman Arnold, Ms. Wiederwohl stated that this administrative regulation, 704 KAR 20:410, 704 KAR 20:420, 704 KAR 20:540, and 704 KAR 20:710 pertained to the certification of education administrators, including directors of special education, principals, supervisors of instructors, superintendents, and directors of pupil personnel. These administrative regulations were amended to align the programs with a standards-based approach at the request of education administrators and professors at teacher education colleges in order to align the programs statewide. The remaining administrative regulations (704 KAR 20:210 & E, 704 KAR 20:280 & E, 704 KAR 20:500 & E, 704 KAR 20:706 & E, and 704 KAR 20:750 & E) were originally filed as emergency administrative regulations in July, 2000, to enact statutory changes enacted during the 2000 Regular Session of the General Assembly.

This administrative regulation was amended as follows: (1) a new Section 1 was created to define Level I and Level II, pursuant to KRS 13A.100, 13A.120, and 13A.130; (2) Section 3 was amended to: (a) delete the cross-reference to an outdated Section; (b) authorize a person to work in special education if the person holds a valid certificate possessing the code ADSE for approval of director of special education; and (c) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4); (3) Section 6 was amended to delete provisions that were outdated; and (4) Section 7 was amended to correct a cross-reference to another administrative regulation.

704 KAR 20:280 & E. Endorsement for teachers of gifted education. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (2) Section 1 was amended to define "teacher for gifted education"; (3) Section 2 was amended to: (a) delete the definition of "teacher for gifted education" from the substantive provisions, as required by KRS 13A.220(3)(f); and (b) delete provisions that repeated KRS 13A.152(2), as required by KRS 13A.120(2)(e) and (f); and (4) the TITLE and Sections 1, 2, 3, and 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4) and 13A.2251(2)(c).

704 KAR 20:410. Certification for supervisor of instruction, grades K-12. This administrative regulation was amended as follows: (1) the TITLE was amended to delete the reference to grades K-12; (2) a new Section 1 was created to define Level I and Level II, pursuant to KRS 13A.100, 13A.120, and 13A.130; and (3) Section 3 was amended to correct a cross-reference to another administrative regulation. 704 KAR 20:420. Certification for school superintendent. This administrative regulation was amended as follows: (1) Section 2 was amended to correct a cross-reference to another administrative regulation; and (2) Section 4 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

704 KAR 20:500 & E. Certificates for teachers of exceptional children - communication disorders. This administrative regulation was amended as follows: (1) the TITLE and Sections 1 through 3 were amended to use the statutory term for this certificate for teachers of exceptional children/communication disorders, as required by KRS 13A.222(4)(e); (2) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (4) Sections 1 and 2 were amended to clarify when each section was applicable; and (5) Sections 1 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4) and 13A.2251(2)(e).

704 KAR 20:540. Professional certificate for directors of pupil personnel and assistants. This administrative regulation was amended as follows: (1) a new Section 1 was created to define Level I and Level II, pursuant to KRS 13A.100, 13A.120, and 13A.130; and (2) Section 3 was amended to correct a cross-reference to another administrative regulation.

704 KAR 20:706 & E. Admission, placement, and supervision in student teaching. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (2) Section 2 was amended to delete provisions that repeated KRS 161.042(3), as required by KRS 13A.120(2)(e) and (f); (3) Sections 4 and 7 were amended to delete superfluous language, as required by KRS 13A.222(4); (4) and Sections 1, 2, 3, 6, 7, 8 and 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4) and 13A.2251(2)(e).

704 KAR 20:710. Professional certificate for instructional leadership - school principal, all grades. This administrative regulation was amended as follows: a new Section 1 was created to define Level I and Level II, pursuant to KRS 13A.100, 13A.120, and 13A.130.

704 KAR 20:750 & E. Teachers' National Certification Incentive Trust Fund. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 6(3) were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1, 2, 3, 4, 5, and 7 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4) and 13A.2251(2)(e).

Labor Cabinet: Department of Worker's Claims

803 KAR 25:010 & E. Procedure for adjustments of claims. Donna Floyd, Staff Attorney, represented the Department.

In response to a question by Chairman Arnold, Ms. Floyd stated that these administrative regulations were amended to conform to changes to workers' compensation made by House Bill 992, enacted during the 2000 Regular Session of the General Assembly, and to remove arbitrators from the workers' compensation system.

This administrative regulation was amended as follows: (1) Section 1(9) was amended to (a) clarify the definition of "Latest Available Edition"; and (b) comply with the drafting requirements of KRS 13A.222(4); and (2) Sections 5(2) and 6(2) were amended to correct internal cross-references. 803 KAR 25:012 & E. Resolution of medical disputes. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Sections 1, 3, and 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) Appendix A and Appendix B were amended to correct the required date.

803 KAR 25:101 & E. Provision of workers' compensation rehabilitation services. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Sections 1 and 4 were amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Section 2 was amended to correct the name of the Cabinet for Health Services.

Cabinet For Health Services: Department for Public Health: Division of Epidemiology and Health Planning: Communicable Diseases

902 KAR 2:020. Disease surveillance. Gary Kupchinsky, HIV-AIDS Branch Manager, represented the Department.

In response to a question by Chairman Arnold, Mr. Kupchinsky stated that this administrative regulation implemented the unique code reporting requirements of Senate Bill 227, which was enacted during the 2000 Regular Session of the General Assembly. Section 7 of this
administrative regulation established a unique identifier that included the person's first and last initials, date of birth, and last four digits of a person's Social Security number. This administrative regulation required physicians and laboratories to report all persons who had been recorded as HIV positive. The number of people reporting HIV had stabilized during the last two years and there has not been a significant amount of change in that number.

This administrative regulation was amended as follows: (1) the RELATION TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) amend the NECESSITY, FUNCTION, AND CONформITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.22(3)(f); and (3) Sections 1, 2, 5, 6, 7, 9, and 10 were amended to comply with the drafting requirements of KRS 13A.22(4).

State Health Plan

502 KAR 17:041. State Health Plan for facilities and services. John Gray, Director, Certificate of Need Office, Charlie Kendall, Branch Manager, Health Policy Development Branch, and Ann Gordon, represented the Cabinet. Ronnie Pryor, LifePoint Hospitals; Jon O'Shaugnessy, Chief Executive Officer, Lake Cumberland Regional Hospital, Somerset; and Mike Baker, Attorney, HargroveBaker, PSC, spoke in favor of the amendment. Nancy Galvagni, Kentucky Hospital Association, and Matt Klein, Attorney, representing St. Elizabeth's Medical Center and Baptist Health Care System, appeared before the Subcommittee.

Representative Bruce stated that he wanted to propose an amendment to this administrative regulation. It was his understanding that the Cabinet did not object to the amendment. The amendment would make changes to two pages of the State Health Plan. On Page 11, after the phrase "For adult open heart surgery", the colon should be changed to a comma and the following language should be inserted: "there is not an existing or approved open heart surgery program in the ADD or the following criteria are met:" On Page 17, after Criterion 10.b.3, the following should be inserted: "11. Notwithstanding the foregoing review criteria, an application proposing therapeutic catheterization services shall be consistent with this plan if there is not an existing or approved therapeutic catheterization service (except for the use of clot-dissolving infusion drugs approved by the FDA such as Streptokinase and TPA) in the ADD."

Mr. Gray stated that the Cabinet did not object to this amendment.

In response to questions by Representative Lee, Mr. Gray stated that this amendment was not proposed or discussed during the public hearings held on this administrative regulation. Thus, other Kentucky hospitals were not aware of this amendment.

In response to a question by Representative Lee, Ms. Galvagni stated that the Kentucky Hospital Association could not speak on the merits of this amendment because the amendment had not been discussed prior to the Subcommittee meeting and the substance of the amendment was just read by Representative Bruce. The Association filed comments regarding the state health plan at the public hearing in August and believed that, except for minor clarification of the MRI standards, changes were not needed. The Association had established a specific process to develop its position on certificate of need and state health plan matters, including a specific committee composed of administrators throughout the state that discussed needed changes to the state health plan each year. When an individual member or hospital wanted a change to the state health plan, the member or hospital presented the change to the committee, the committee debated the proposal, and the committee's recommendations were then forwarded to the Association's board and to the Cabinet. Because the Association's certificate of need committee had not reviewed the proposed amendment, she could not comment on whether the amendment was good or bad.

Representative Lee stated that, in fairness to other hospitals in Kentucky and to give an opportunity for public comment on this amendment, this administrative regulation should be deferred until the December, 2000, Subcommittee meeting. It was common Subcommittee practice to request deferral of administrative regulations to allow additional time for applicable comments. The Kentucky Hospital Association and other hospitals should be given an opportunity to review the amendment and offer their comments. He was not opposed to the open heart programs of hospitals, but believed the issue needed additional time for study and review.

Representative Bruce stated that he did not want this administrative regulation deferred because some hospitals would support the amendment and some would oppose the amendment. The amendment was good and should not be delayed.

Ms. Galvagni stated that most hospitals were not aware of the amendment. While she knew that one hospital supported the amendment, she did not know how many hospitals supported or opposed the amendment because the amendment had not been made available for public comment.

In response to questions by Chairman Arnold, Mr. Baker stated that his clients were not trying to avoid the certificate of need process. Even if the amendment was adopted, the hospitals would still be required to complete the certificate of need process, including formal review and demonstrating consistency with all review criteria. The amendment would amend the state health plan to permit approval of an open heart surgery program in area development districts that did not have a program in the district, if the program submitted an application and met all other criteria consistent with the state health plan. Larger hospitals with existing programs had traditionally opposed the development of new programs, especially in rural areas in South Central and Eastern Kentucky. Four area development districts did not have an approved open heart surgery program currently and a fifth district, located in Hazard, had a program approved late last month which was subject to a challenge by existing providers. That request was before the Cabinet on a reconsideration request and would take several years to be decided by the court system. He represented that the pending court cases had presented a broader amendment during the public hearing on this administrative regulation but scaled the amendment back to treat these programs the same way other programs are treated in the state health plan by the Cabinet. Most services in the state health plan were based on area development districts and the open heart surgery programs should be treated the same way.

In response to questions by Senator Long, Mr. Baker stated that there was a separate dispute about the location of an open heart surgery program less than fifty miles away from an existing hospital's program. The existing hospital established its program based on a legislative fiat, not under the certificate of need procedure, and was involved in a court battle regarding the constitutionality of that legislation. The technical notes at the beginning of the state health plan indicated that area development districts were the basis for reviewing all applications for certificates of need.

In response to questions by Chairman Arnold, Mr. Gray stated that, if the amendment were approved, a hospital would still be required, by statute, to demonstrate a need for the service, accessibility for people in the service area, cost effectiveness, an ability to establish inter-relationships and linkages with existing health care providers, and an ability to provide a quality service.

Representative Lee stated that this administrative regulation should be deferred. To give the other hospitals a chance to comment on the amendment, because the amendment was not presented at an earlier stage in the administrative regulation process. The amendment was probably good and should be approved after everyone had an opportunity to appear before the Subcommittee.

Mr. Baker stated that his clients offered an amendment during the regular process, which all hospitals knew about. The Kentucky Hospital Association was informed in advance about this amendment.

In response to questions by Representative Lee, Mr. Baker stated that this particular amendment was not offered prior to the Subcommittee meeting.

Representative Lee stated that he agreed with a suggestion by Chairman Arnold to vote on the amendment today and then defer consideration of this administrative regulation as amended until the December, 2000, Subcommittee meeting. The Kentucky Hospital Association and its members could appear before the Subcommittee and offer their position on the amendment.

In response to a question by Senator Long, Subcommittee staff stated that if the Subcommittee approved this administrative regulation at this Subcommittee meeting, the Subcommittee would lose jurisdiction over this administrative regulation under KRS Chapter 13A. In that situation, the Subcommittee would be authorized to review this administrative regulation as an existing administrative regulation at a future meeting date, but the Subcommittee would not be authorized to
amend an existing administrative regulation. Mr. Klein stated that he agreed with Representative Lee that this administrative regulation should be deferred. The hospitals he represented submitted a proposed change less than two weeks ago to the Cabinet to change the review criteria for open heart surgery services. His proposed change was included in a prior certificate of need decision adopted by the Cabinet. The Cabinet said it would not agree to the proposed amendment because the state health plan would be reviewed again, beginning in January 2001, and working through the entire year. The Cabinet informed him that it would give proper and timely consideration to all comments regarding proposed changes to the state health plan or certificate of need criteria at that time. He was also informed that the Cabinet would not agree to any changes to the state health plan in November. Today, the Cabinet changed its position and stated it would agree to a proposed amendment, which his clients did not believe should be made. All hospitals should be given one month to review the proposed amendment.

Mr. Pryor stated that the Cabinet had received a copy of the proposed amendment's language prior to the Subcommittee meeting. The Cabinet decided to take a neutral stand on the proposed amendment and accept the Subcommittee's decision either way.

Mr. Gray stated that he had seen the language before that day. Representative Bruce moved that this administrative regulation be amended and approved as amended. Senator Long seconded the motion.

Representative Allen stated that he was from a rural area and would probably support the proposed amendment, but he agreed that this administrative regulation should be deferred.

Representative Lee stated that he did not oppose the proposed amendment. If an area development district needed an open heart program, or any other program, he did not oppose the establishment of a program according to the criteria established in the state health plan. However, because this amendment affects other hospitals throughout Kentucky, the proposed amendment and this administrative regulation should be deferred one month.

In response to a question by Chairman Arnold, Mr. Gray stated that even if the proposed amendment was approved, the hospital would still be required to comply with the certificate of need requirements.

In response to a question by Chairman Arnold, Ms. Gordon stated that the Cabinet had not taken a position on the proposed amendment. The language that will be amended was inserted into the state health plan by the Health and Welfare Committee in 1999. The Cabinet wanted to follow legislative intent. The Cabinet did not believe this administrative regulation should be deferred because this administrative regulation would be detrimental on health care costs and would not object to a deferral of this administrative regulation. Additionally, the state health plan was under constant review by the Cabinet.

In response to a question by Chairman Arnold and Representative Lee, Ms. Galvagni stated that the Kentucky Hospital Association did not have a position on the proposed amendment because the Association had not seen the amendment.

Senator Pendleton stated that he believed a legislator should propose legislation that would address this issue.

Representative Bruce requested a roll call vote on his motion.

The motion to amend this administrative regulation and approve this administrative regulation as amended was approved on a roll call vote, with Senators Long and Pendleton, and Representatives Allen, Arnold, and Bruce voting in support of the motion, and Representative Lee voting against this motion.

Senator Long and Chairman Arnold requested that interested parties present testimony regarding this administrative regulation as amended at its December, 2000, Subcommittee meeting.

This administrative regulation was amended as follows: (1) Section 3(1) was amended to indicate that the material incorporated by reference was amended November 14, 2000; (2) Page 11 of the State Health Plan was amended to: (a) change the colon after the phrase "For adult open heart surgery" to a comma; and (b) insert the following language: "there is not an existing or approved open heart surgery program in the ADD or the following criteria are met;" and (3) Page 17 of the State Health Plan was amended to insert after Criterion 10.b., the following language: "11. Notwithstanding the foregoing review criteria, an application proposing therapeutic catheterization services shall be consistent with this plan if there is not an existing or approved therapeutic catheterization service (except for the use of clot-dissolving infusion drugs approved by the FDA such as Streptokinase and TPA) in the ADD."

Subcommittee Staff Note: The amendment to Section 3(1) was inserted by Subcommittee staff to accurately reflect the amendment to the material incorporated by reference approved by the Subcommittee. Additionally, the page numbers refer to the pages of the "dirty" copy of the material filed by the Cabinet October 5, 2000. The corresponding page numbers in the "clean" copy of the material filed October 5, 2000, are Pages 11 and 16, respectively.

Department for Medicaid Services: Division of Physical Health: Medicaid Services

907 KAR 1:626 & E. Reimbursement of dental services. Phil Kremer, Director, represented the Division.

In response to a question by Chairman Arnold, Mr. Kremer stated that this administrative regulation implemented the increased dental reimbursement rates approved as part of House Bill 502, enacted during the 2000 Regular Session of the General Assembly. The rates were increased by thirty-two percent.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 4 was amended to: (a) specify the meaning of comprehensive orthodontic procedure; and (b) correct an internal cross-reference; and (3) Section 7 was amended to comply with the drafting requirements of KRS 13A.222(4).

907 KAR 1:831 & E. Reimbursement of vision program services. This administrative regulation was amended as follows: the STATUTORY AUTHORITY paragraph was amended to correct statutory citations.

907 KAR 1:790 & E. Medicaid service category expenditure information. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph and Section 2 were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 2 was amended to specify the required form.

Division of Children's Health Programs: Payment and Services

907 KAR 3:140 & E. Coverage and payments for the Health Access Nurturing Development Services (HANDS) Program. Lynne Flynn, Director, represented the Division.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Section 4(3) was amended to correct a typographical error.

Office of Aging Services: Aging Services

910 KAR 1:240. Certification of assisted living communities. Jerry Whitley, Director, represented the Office.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 2(6) was amended to require in-service training to be completed within six months of hire; (3) Section 6(1) was amended to delete unclear language suggesting mandatory fine; and (4) Sections 1, 2, and 4 through 7 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Cabinet For Families And Children: Department for Community Based Services: Division of Policy Development: Family Support: Child Support

921 KAR 1:400 & E. Establishment, review, and modification of child support and medical support orders. Karen Doyle and Steve Veno, Director, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 2 was amended to specify the number of the required forms; and (3) Section 5 was amended to incorporate by reference all forms used to determine child support.

Protection and Permanency: Child Welfare

922 KAR 1:050 & E. Approval of adoption assistance, Cliff
 Jennings represented the Department.

In response to a question by Chairman Arnold, Mr. Jennings stated that this administrative regulation expanded the definition of "special needs child" to include more children committed to the Cabinet under that umbrella to increase the number of adoptions.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to add a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clarify the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 through 7 were amended to: (a) add Section titles; and (b) comply with the drafting requirements of KRS 13A.222(4) and 13A.2251(2).

The Subcommittee determined that the following administrative regulations compiled with statutory authority:

Kentucky Higher Education Assistance Authority: Division of Student Services: CommonwealthMerit Scholarship Program

11 KAR 15:030. Dual enrollment under consortium agreement. Richard Casey, General Counsel, and Linda Renschler, Student Aid Branch Manager, represented the Authority.

Teachers' Retirement System: General Rules

102 KAR 1:220. Final average salary based on average of three highest salaries. Robert Barnes, General Counsel, represented the System.

In response to a question by Chairman Arnold, Mr. Barnes stated that this administrative regulation was promulgated in accordance with KRS 161.220(9), which allowed the Board of Trustees to permit the calculation of retirement annuities based on the member's highest three salaries, rather than five salaries. To qualify, the member was required to have at least twenty-seven years of Kentucky service and be at least fifty-five years of age.

Kentucky Employees' Retirement System: General Rules


Board of Nursing

201 KAR 20:240. Fees for applications and for services. Nathan Goldman, General Counsel, and Sharon Weisenbeck, Executive Director, represented the Board. Ann Powell, Executive Director, Kentucky Nurses Association, appeared before the Subcommittee.

Chairman Arnold stated that he wanted to read a letter he received from a Director of Nursing at a rural hospital in Kentucky. Along with the letter, the nurse enclosed a copy of the Kentucky Nurses Association publication which contained a notice regarding the proposed fee increase. The letter stated: "There is no doubt that Kentucky Nurses will pay this increased license renewal fee because we have no choice, if we want to practice nursing in Kentucky. I'm not sure how this fee compares to that of surrounding states. It could be that Kentucky's fees have been too low for too long. That would explain why they would jump to a 40% increase at one time. Hourly waged Nurses, on the average, probably received a 3% - 5% raise last year and don't anticipate any more than that next year. They find it difficult to justify the 23% annual increase in the license fee that the Board has proposed. A more gradual increase would have been more readily accepted or a statement that no further increases would be made until 2012. The Board's timing seems to be a little inappropriate with the nursing shortage issue and the union activity in the larger cities. It has been difficult enough to recruit individuals to pursue Nursing as a career."

In response to questions by Chairman Arnold, Mr. Goldman stated that he knew that some of the nursing fees charged by surrounding states were higher than Kentucky's proposed fee amount while some fees were lower. Comparable to other professions in Kentucky, the fees for nursing were lower than the fees charged for other professions.

Ms. Weisenbeck stated that a newspaper article yesterday discussed the problems faced by the Indiana Board of Nursing, which had a lower fee for licensure. Kentucky had a very active disciplinary program and could resolve cases in an average time of 2.8 months, compared with six months' time in other states. The Board of Nursing provided important services to the public with its disciplinary procedures and with assistance to nurses with difficulties.

Mr. Goldman stated that at the October 10, 2000, Subcommittee meeting, Representative Lee requested the Board send notification to all nurses, rather than just the two organizations that represent registered nurses and licensed practical nurses, as required by KRS Chapter 13A. The Board asked the Kentucky Nurses Association to include a notice in its publication, which was sent to all 61,000 nurses registered in Kentucky. The notice requested that comments be sent to Mr. Goldman by November 13, 2000. He received seventeen phone calls and one email from the 61,000 nurses.

Ms. Powell stated that the Association published the notice in the Kentucky Nurse and received one email regarding the notice, which the Association forwarded to Mr. Goldman. The Association notified their district nursing associations throughout the state and received comments that, because the Association had asked the Board to improve technology to allow easier access and to more rapidly process disciplinary matters, the Board needed additional funding.

Board of Physical Therapy

201 KAR 22:135. Fees. Becky Klusch, Executive Director, Debra Turner, Board member, and Nancy Bringly, former Director, represented the Board.

In response to questions by Chairman Arnold, Ms. Klusch stated that this administrative regulation increased the fee for reinstatement of license from $126 to $150.

Justice Cabinet: Department of Criminal Justice Training: Kentucky Law Enforcement Council

503 KAR 1:140 & E. Peace officer professional standards. Stephanie Bingham, General Counsel, Thor Morrison, Administrative Specialist, Peace Officers Professional Standards Board, and Steve Lynn, Associate General Counsel, represented the Department.

Education Professional Standards Board

704 KAR 20:210 & E. Substitute teachers and emergency school personnel. Mary Ellen Wiederwol, Director of Legislative and Public Relations, represented the Board.

Public Service Commission: Utilities

807 KAR 5:063. Filing requirements and procedures for proposals to construct antenna towers for cellular telecommunications services or personal communications services. Deborah Eversole, General Counsel, represented the Commission.

Ms. Eversole stated that this administrative regulation was amended to provide additional notice requirements for persons who own property contiguous to property on which a cell tower was to be built.

In response to questions by Representative Bruce, Ms. Eversole stated that, while statutory provisions authorized telecommunication utilities to condemn property if necessary, to her knowledge, a cell company had not taken action previously to condemn property in order to build a cell tower. This administrative regulation required a company planning to construct a cell tower to publish the notice in a newspaper of general circulation in the area, post a notice both on-site and near the site on the nearest public road, and send notice, return receipt requested, to everyone who owned property within 500 feet of the site. The proposed change required the company to send notice to everyone who owned property contiguous to that property because sometimes the property was outside the 500 feet requirement.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:

Council On Postsecondary Education: Nonpublic Colleges

13 KAR 1:030E, Campus security.

Public Education Institutions

13 KAR 2:100E, Campus security.
Department Of Law: Office of the Attorney General: Prosecutors Advisory Council: Medical Examination of Sexual Abuse Victims 40 KAR 3:010E. Payment schedule to hospitals, physicians and or sexual assault nurse examiners for medical examination of victims of sexual offenses.

Revenue Cabinet: Department of Law: Division of Tax Policy: Sales and Use Tax; Miscellaneous Retail Transactions 103 KAR 28:140E. Telephonic and telegraphic communications and services.


Board of Medical Licensure 201 KAR 9:021E. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees.

Board of Certification for Professional Counselors 201 KAR 36:070. Education requirements.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game 301 KAR 2:225E. Dove, wood duck, teal and other migratory game bird hunting.

Licensing 301 KAR 5:030E. Purchasing licenses and obtaining replacement licenses.

Department Of Agriculture: Division of Markets: Ginseng 30/ KAR 45:010. Ginseng, general provisions.


401 KAR 52:020. Title V permits.
401 KAR 52:030. Federally-enforceable permits for nonmajor sources.
401 KAR 52:050. Permit application forms.
401 KAR 52:060. Acid rain permits.
401 KAR 52:070. Registration of designated sources.
401 KAR 52:080. Regulatory limit on potential to emit.
401 KAR 52:090. Prohibitory rule for hot mix asphalt plants.


Health and Physical Education Programs 704 KAR 4:020E. School health services.


Public Protection And Regulation Cabinet: Department of Insurance: Fees and Taxes 806 KAR 4:010E. Fees of the Department of Insurance.

Agents, Consultants, Solicitors and Adjusters 806 KAR 9:001E. Prelicensing courses of studies; instructors.
806 KAR 9:060E. Identification cards.
806 KAR 9:070E. Examinations.
806 KAR 9:120E. Unlicensed adjusters.
806 KAR 9:200E. Volume of insurance agent exchange of business.
806 KAR 9:210E. Time limit for replacement of evidence of license, financial responsibility.
806 KAR 9:220E. Continuing education.
806 KAR 9:250E. Specialty credit insurance producer.
806 KAR 9:260E. Rental vehicle agent.
806 KAR 9:280E. Business entity election.
806 KAR 9:300E. Current licensees in good standing to receive equivalent license.

Unauthorized Insurers' Prohibitions, Process and Advertising 806 KAR 11:010E. Industrial insured, government entity insured, and exempt commercial policyholder.

Rates and Rating Organizations 806 KAR 13:500E. Property and casualty rate and rule filings.

Insurance Contract 806 KAR 14:000E. Rate and form filing for life and health insurers.
806 KAR 14:000E. Property and casualty insurance form filings.

Health Insurance Contracts 806 KAR 17:190E. Standard health benefit plan and comparison format.
806 KAR 17:220E. Approval criteria and requirements for reentry into the Kentucky health insurance market.
806 KAR 17:230E. Requirements regarding medical director's signature on health care benefit denials.
806 KAR 17:260E. Conversion policy minimum benefits.
806 KAR 17:280E. Registration, utilization review, and internal appeal.
806 KAR 17:290E. Independent external review program.
806 KAR 17:300E. Provider agreement filing requirements.

Health Maintenance Organizations 806 KAR 38:020E. Health maintenance organization agent license.


Department for Public Health: Maternal and Child Health 902 KAR 4:085E. Newborn Hearing Screening Equipment Grant Award.
902 KAR 4:120E. Health Access Nurturing Development Services (HANDS) Program.

Health Services and Facilities 902 KAR 20:008E. License procedures and fee schedule.

Division of Licensing and Regulation: Office of Inspector General 906 KAR 1:110E. Critical access hospital services.

Department for Medicaid Services: Division of Physical Health: Medicaid Services 907 KAR 1:044E. Mental health center services.
907 KAR 1:145E. Supports for community living services for an individual with mental retardation or a developmental disability.
907 KAR 1:155E. Payments for supports for community living services for an individual with mental retardation or a developmental disability.
907 KAR 1:170E. Payment for home and community based waiver services.
907 KAR 1:320E. Kentucky patient access and care system (KenPAC).
907 KAR 1:478E. Durable medical equipment covered services and reimbursement.

Division of Children's Health Programs: Payment and Services 907 KAR 3:000E. Coverage and payments for IMPACT Plus services.
Department for Mental Health and Mental Retardation Services: Institutional Care
908 KAR 3:050E. Per diem rate pursuant to the "Patient Liability Act of 1978".

Cabinet For Families And Children: Department for Community Based Services: Protection and Permanency: Child Welfare
922 KAR 1:360E. Private child care placements, levels of care and payment.

The Subcommittee adjourned at 11:45 a.m. until December 12, 2000, at 10 a.m. in Room 149 of the Capitol Annex.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

The Locator Index lists all administrative regulations published in VOLUME 27 of the Administrative Register from July, 2000 through June, 2001. 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 26 are those administrative regulations that were originally published in Volume 26 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2000 bound Volumes were published.

KRS Index

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 27 of the Administrative Register.

Subject Index

The Subject Index is a general index of administrative regulations published in VOLUME 27 of the Administrative Register, and is mainly broken down by agency.
**LOCATOR INDEX - EFFECTIVE DATES**

**VOLUME 26**

The administrative regulations listed under VOLUME 26 are those administrative regulations that were originally published in Volume 26 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2000 bound Volumes were published.

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*Statement of Consideration Not Filed by Deadline
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